BENICIA CITY COUNCIL
SPECIAL MEETING AGENDA

Council Chambers
December 16, 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:

II. CONVENE OPEN SESSION:

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

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.

III. ADJOURN TO CLOSED SESSION:

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

Agency negotiators: Acting City Manager, Administrative Services Director

Employee organizations: Police Officers Association (BPOA), Benicia Firefighters Association (BFA).

IV. RECONVENE TO OPEN SESSION:

V. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS.

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

2. **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.

C. PRESENTATIONS.

D. PROCLAMATIONS.

VI. ADOPTION OF AGENDA:

VII. 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.

VIII. 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. APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH BENICIA FIREFIGHTERS ASSOCIATION. (Administrative Services Director)

The City concluded negotiations with the firefighters on November 17, 2010

and the group voted on ratifying the tentative agreement on December 1, 2010. The Benicia Firefighters Association consists of 26 incumbents and is comprised of the Department's firefighters.
This agreement provides for:

- No salary increases during the term and an ongoing reduction of in lieu holiday pay beginning in December 2010 in an amount equal to a 3.16% reduction of salary as of July 1, 2010.
- Sets a fixed dollar contribution for the City for employee medical insurance that will help control future City cost increases in benefits.
- Agrees to a new lower retirement tier for new hires that will help control future City cost increases in benefits.
- Provides for a reopener for additional negotiations should additional concessions be deemed necessary.

Recommendation:
Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with BENICIA FIREFIGHTERS ASSOCIATION (BFA).

B. APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH BENICIA POLICE OFFICERS ASSOCIATION (BPOA). (Administrative Services Director)

The City concluded negotiations with the BPOA on December 8, 2010 and the group will vote on ratifying the tentative agreement on December 13, 2010. The BPOA consists of 31 incumbents and is comprised of the Department's police officers and sergeants. The staff report for this item will be distributed and available on the City's website on Tuesday, December 14, 2010.

Recommendation:
Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with BENICIA POLICE OFFICERS ASSOCIATION (BPOA).

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

IX. 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.

X. ACTION ITEMS (7:45 PM):

A. REQUEST TO SOLICIT PROPOSALS FOR THE SOLID WASTE,

RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT AND TO HIRE A CONSULTANT TO ASSIST WITH THE PROCESS. (City Attorney)
Unfortunately, the negotiations with Allied Waste for an extension of the Franchise Agreement for garbage services have broken down. Because the contract expires next year, the process to hire a new solid waste collector needs to begin as soon as possible. To assist in that process an expert in the field of solid waste and negotiations of franchises is required. Proposals have been solicited for the expert services.

Recommendation:
Authorize the hiring of a consultant to assist with the Request for Proposals for a new franchise agreement for garbage and related services and authorize the issuance of the Request for Proposals.

B. REPORT FROM THE ARSENAL SUBCOMMITTEE AND RECOMMENDATION FOR AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT TO ENVIRONMENTAL RISK SERVICES ("ERS"). (City Attorney)
With the recent notification from the state Department of Toxic Substances Control that further investigation and remediation is needed for the Benicia Arsenal, the City issued a Request for Qualifications from legal and technical firms to provide the City support on the project. After interviewing the 7 finalists, the team headed by ERS emerged as the group best suited for the City's needs on the Arsenal Project. The Council Subcommittee recommends that an initial agreement be awarded to the team with a not to exceed of $10,000 for out of pocket expenses.

Recommendation:
(1) Adopt the Resolution approving an agreement with ERS Corporation for consulting services for the Benicia Arsenal investigation and potential cleanup project and authorizing the City Manager to sign the contract on behalf of the City; and
(2) Place a standing item on the Council's agenda for a report on the Arsenal.

XI. INFORMATIONAL ITEMS:

A. City Manager Reports.

XII. ADJOURNMENT (9:00 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 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.

AGENDA ITEM
CITY COUNCIL MEETING DATE - DECEMBER 16, 2010
CONSENT CALENDAR

DATE : December 10, 2010

TO : City Manager

FROM : Administrative Services Director

SUBJECT : **APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH BENICIA FIREFIGHTERS ASSOCIATION**

RECOMMENDATION:
Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with BENICIA FIREFIGHTERS ASSOCIATION (BFA).

EXECUTIVE SUMMARY:
The City concluded negotiations with the firefighters on November 17, 2010 and the group voted on ratifying the tentative agreement on December 1, 2010. The Benicia Firefighters Association consists of 26 incumbents and is comprised of the Department's firefighters.
This agreement provides for:

- No salary increases during the term and an ongoing reduction of in lieu holiday pay beginning in December 2010 in an amount equal to a 3.16% reduction of salary as of July 1, 2010.
- Sets a fixed dollar contribution for the City for employee medical insurance that will help control future City cost increases in benefits.
- Agrees to a new lower retirement tier for new hires that will help control future City cost increases in benefits.
- Provides for a reopener for additional negotiations should additional concessions be deemed necessary. The terms of the reopener do not prevent the City from modifying the number of filled positions in the department.

BUDGET:

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 – Clean Copy
- Agreement – Proposed Language

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 THE BENICIA FIREFIGHTERS ASSOCIATION

WHEREAS, the existing Agreement between the City of Benicia and Benicia Firefighters Association 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 Benicia Firefighters Association to negotiate concessions towards closing the $1.2 million dollar gap; and

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

WHEREAS, Benicia Firefighters Association 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 Benicia Firefighters Association (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 4 – Employee Rights
2. Section 5 – Association Business
3. Section 12 – Bereavement Leave
4. Section 14 – Holidays
5. Section 15 – Salary Administration
6. Section 17 – Deferred Compensation
7. Section 21 – Hours of Work
8. Section 23 – Insurance
9. Section 24 – Retirement
10. Section 26 – Residency
11. Section 28 – Closing Clauses
12. Attachment A – Temporary Light Duty

*****

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 16th day of December, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Elizabeth Patterson, Mayor

ATTEST:

_____
Lisa Wolfe, City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

CITY OF BENICIA

AND

BENICIA FIREFIGHTERS ASSOCIATION (BFA)

JULY 1, 2010

TO

JUNE 30, 2012

Benicia Fire Department
Memorandum of Understanding

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SECTION 1. PREAMBLE

This Agreement is entered into by the City of Benicia, hereinafter referred to as the "City," and the Benicia Firefighters Association, hereinafter referred to as the "BFA," for the purpose of promoting harmonious relations between the City and the Firefighters, 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 specifically stated herein.

SECTION 2. RECOGNITION

2.1 The BFA is hereby recognized by the City as the bargaining agent for the Firefighters of the City, and for employees properly included in the said bargaining unit, under the conditions of the State law, and City ordinances providing for collective bargaining for Firefighter employees.

2.2 Both parties aver that this agreement sets forth the terms and conditions to which each party agrees to be bound, and that each agreement has been reached voluntarily without undue or unlawful coercion or force by either party.

SECTION 3. NON-DISCRIMINATION

3.1 The City will not discriminate against any employee because of race, color, creed, sex, age, or national origin; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in the BFA, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of the BFA.

3.2 The BFA shall not discriminate against any employee assigned to the Benicia Firefighters representation unit because of membership or non-membership in the BFA or because of race, creed, color, national origin, sex or age.

SECTION 4. EMPLOYEE RIGHTS

4.1 Employees shall have the right to fair and equal treatment in all aspects of employment conditions.

4.2 Neither management nor its representatives shall exercise their rights and authority in relationship to conditions of employment in a capricious, arbitrary, or unreasonable manner.

4.3 Employees shall not have any formal punitive personnel action taken which will result in any loss of pay or benefits, unless the employee is notified in writing as to the reason or reasons thereof and is given reasonable opportunity to respond.

4.4 An employee's salary shall not be directly deposited in the bank by the City without the

employee's consent.

4.5 All investigations, disciplinary actions and administrative appeals shall comply with the provisions of the Firefighter Procedural Bill of Rights Act (Government Code Section 3250, et seq) limited to only those classifications in this bargaining unit that FOBOR applies to.

SECTION 5. ASSOCIATION BUSINESS

5.1 The City agrees to provide space on bulletin boards to the BFA for the announcement of meetings, election of officers of the BFA and any other material related to the BFA business. Furthermore, the BFA shall not post material detrimental to the labor-management relationship nor of a political or controversial nature. Subject to the City's Policies including the limitations in this section, the BFA may utilize City telephones, U.S. Mail, the City's Interdepartmental mail system and/or City's electronic mail system to communicate with local association representatives and members in their workplaces, provided this use does not generate a cost to the City.

5.2 No BFA member or representative shall solicit members, engage in organizational work, or participate in other BFA activities during working hours on the City's premises except as provided for in the processing of grievances, or during periods of negotiations to update the membership on the progress of said negotiations. A BFA representative shall have thirty (30) minutes of scheduled time with any new hire during that employee's initial month of employment. This time shall be scheduled between the hours of 0800 and 1600 in coordination with the Fire Chief or Fire Chief's designee.

5.3 BFA members or representatives may be permitted to use suitable facilities on the City's premises to conduct BFA business during non-work hours upon obtaining permission from the City's Personnel Officer or his designated representative. Any additional costs involved in such use must be paid for by the BFA.

5.4 BFA representatives shall be permitted to investigate and discuss grievances during working hours on the City's premises if notification is given to the Personnel Officer or his/her designated representative. If the BFA representative is an employee of the City, he/she shall request from his/her immediate supervisor, reasonable time off from his/her regular duties to process such grievances. The City will provide a reasonable number of employees with time off, if required, to attend negotiating meetings.

5.5 The City shall recognize one (1) employee and one (1) alternate designated by the Union on each shift to act as the delegate and representative of the union.

The Union shall provide the Fire Chief with a list, in writing, of the names of the designated stewards and alternates on each shift, and of any change in same. The City shall not be required

to recognize any steward or alternate whose name is not on the list. The alternate steward shall function only in the absence from duty of the regular steward.

Stewards shall conduct their activities at such times and in such manner as not to impede Fire Department operations pursuant to Section 5.2 of this Memorandum of Understanding.

5.6 A. Officers, stewards and other members of the BFA, as designated by the Association President, shall be granted leave from duty with regular straight time pay for Association business such as attending training session, conferences, etc. of benefit to the bargaining unit, provided that the total leave provided by the City for such purpose shall not exceed 180 hours in any fiscal year. At least two (2), but preferably five (5) days notice to the Fire Chief is required, unless waived by the Fire Chief.

B. On July 1, of each year, the City shall deduct up to six (6) hours from the vacation and/or compensatory time leave accruals for each bargaining unit member to create the bank of hours to be used pursuant to paragraph (A) above. The BFA shall notify the City by May 1 of each year as to the amount of leave to be deducted from the coming fiscal year. In the event no notification is given, the amount of the deduction shall remain the same as the previous year. Any portion of the bank unused in any fiscal year shall be carried over to the following year and the bank accumulation shall be unlimited.

C. One (1) hour will be deducted from the leave bank for each hour an employee is excused for Union leave. If an overtime assignment is necessary to accommodate the leave request, one and one-half (1 ½) hours will be deducted from the leave bank for each hour the employee is excused for Union leave.

D. There shall be no cost to the City for hours used in accordance with this section.

SECTION 6. <u>OVERTIME WORK/COMP/RECALL/SAFETY COMMITTEE</u>

6.1 **<u>Overtime Work:</u>** All work performed in excess of an employee's normal workday or in excess of an employee's normal workweek shall be considered overtime work.

The parties agree that assignments of overtime work shall rest solely with the department head or the designated representative. The parties agree that the assignment of overtime work is on an involuntary basis and any employee refusing assignment of such work is subject to disciplinary action deemed appropriate by the department head.

6.2 **<u>Compensation for Overtime Work:</u>** Employees performing compensable overtime work shall be paid time and one-half at their straight-time hourly rate of pay. This overtime rate shall be all inclusive and no additional compensation shall be paid.

6.3 **<u>Compensatory Time:</u>** Employees may, at the election of the employee, be compensated for overtime work with compensatory time off in lieu of overtime pay. Compensatory time shall

accrue at the overtime rate subject to the limitations of the Fair Labor Standards Act and implementing regulations thereto. Use of Compensatory Time-Off shall be pursuant to the provisions of Leave Usage under section 11.4 of this Memorandum of Understanding. The City and BFA agree that this procedure meets FLSA requirements.

6.4 **Recall:** If an employee is recalled to work at a time other than his/her scheduled work shift, he/she shall be credited with a minimum of two (2) hours at one and one-half (1-1/2) times his/her straight-time hourly rate of pay.

6.5 **Safety Committee:** The City agrees that at least one (1) member of the BFA representation unit shall serve on the Safety Committee. The BFA member of the Safety Committee may attend all meetings of the Safety Committee which are held while he/she is in an on-duty status. The BFA agrees that no overtime or additional compensation will be authorized for the Safety Committee member.

SECTION 7. AGENCY SHOP

7.1 **Agency Shop:** As a condition of continuing employment, employees shall become and remain members of the Union or shall pay to the Union a service fee in lieu thereof. Such service fee shall be established by the Union and shall not exceed that portion of the Union's dues and initiation fees (herein after collectively termed "service fee") paid by members of the Union as are expended by the Union in fulfilling its responsibilities for representing members of the Representation Unit in the negotiation and administration of the Memorandum of Understanding. Initiation fees shall only apply to employees hired after implementation of this agreement. The Union shall comply with the rules governing the establishment of agency shop fees as set forth in the U.S. Supreme Court's decision in March, 1986 in Chicago Teachers Union v. Hudson.

7.2 **Implementation:** Not later than thirty (30) days after approval of this Agency Shop Agreement, the City shall deliver to each employee subject to this Memorandum of Understanding who is not also a member of the Union a notice advising that the City has entered into an Agency Shop Agreement with the Union and that all employees subject to the Memorandum of Understanding must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Union dues or a service fee, or a charitable contribution equal to the service fee.

7.3 **Payroll Deductions:** The City shall deduct Union dues or service fees and premiums for approved insurance programs from the employee's pay in conformity with State and City regulations. The City shall promptly pay over to the designated payee all sums so deducted. The City shall also periodically provide the Union with a list of all persons making charitable deductions pursuant to the religious exemption granted herein.

7.4 **Hold Harmless:** The Union shall indemnify, defend, and hold harmless the City, its officers, employees, and agents acting on its behalf from and against any and all losses, damages,

costs, expenses, claims, demands, actions, suits, judgments and other forms of liability arising out of the application or enforcement of this Section. In no event shall the City be required to pay from its own funds Union dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

7.5 Election: The election to implement the provisions of this agreement shall not prohibit or restrict an election to rescind this Section as provided for by Section 3502.5 of the Government Code.

7.6 Waiver of Election for Newly-Represented Employees and New Representation Units: The accreditation of classifications and/or employees to representation units set forth in this memorandum of Understanding shall not require an election pursuant to subsection 6 herein for the application of this Agency Shop provisions to such classifications and/or employees. The recognition of newly-established bargaining units and inclusion of same within this Memorandum of Understanding shall also not require an election pursuant to Subsection 7 herein for the application of this Agency Shop to such units.

SECTION 8. NO STRIKE

The BFA agrees that participation in a strike, shall subject employees to disciplinary action, up to and including discharge. The BFA, its representatives, or members shall not engage or cause, instigate, encourage, sanction, or condone a strike of any kind. No employee shall refuse to cross any picket line in the conduct of official City business nor shall the BFA, its representatives, or members, discriminate in any way toward anyone who refuses to participate in a strike.

"Strike" means the concerted failure to perform or report to duty, for the purpose of inducing, influencing, or coercing a change in the conditions of compensation, or the rights, privileges, or obligations of employment.

SECTION 9. MANAGEMENT RIGHTS

The employee organization BFA, agrees that the City retains all its remaining rights and authority under law and expressly and exclusively retains its management rights not affected by this agreement 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; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons; maintain the efficiency of government operations; determine the methods, means and numbers and 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 subcontract any work 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 the technology of performing its work.

SECTION 10. SENIORITY

10.1 The Fire Department shall establish and maintain two (2) seniority lists, one by total service in the department and one by time in each classification held by the employee. They shall be brought up to date on July 1 of each year and immediately posted in both Fire Stations and the Fire Prevention Office. A copy of the same shall be provided to the Union. Any objections to the seniority lists, as posted shall be reported to the Fire Chief in written form within ten (10) working days or it shall stand approved.

10.2 Department Seniority shall be followed in the selection of vacations.

10.3 Seniority in each classification shall include all service in a classification since date of original regular appointment in said classification under the City's classified Civil Service System, without break in City service, regardless of a temporary filling of another classification. If there is a tie in seniority in rank then the individual's score on the eligible list will be used to break the tie.

10.4 Seniority in rank will be considered in all transfers and in the filling of all vacancies until such vacancies are filled by promotion or by limited appointment. Where all else is equal, seniority in rank will be used in breaking a tie.

SECTION 11. VACATION LEAVE AND ANNUAL PERSONAL LEAVE

11.1 Except for those employees who are discharged, dismissed following an absence without leave, or otherwise terminated for cause, the City shall grant vacations to its employees. Employees covered by this Agreement shall be entitled to accumulate vacation time in accordance with the following schedule:

Years of Service	Shifts Off Per Year
Less than 4 years	7
Beginning 4th year	10

Beginning 7th year	11
Beginning 11th year	12
Beginning l4th year	13

Employees assigned to a forty (40) hour workweek shall accrue vacation in accordance with the following schedule:

Years of Service	**Shifts**	**Vacation Days**
Less than 4 years	7	15.0
Beginning 4th year	10	21.4
Beginning 7th year	11	23.6
Beginning 11th year	12	25.7
Beginning 14th year	13	27.9

11.2 The vacation accrual limit will equal double the shifts allowed per year. The accrual limit will be imposed on December 3lst of each year.

11.3 **Vacation Conversion Procedure:** Employees who may be reassigned from a fifty-six (56) hour workweek to a forty (40) hour workweek, or vice versa, for more than 30 day periods, shall have their accrued vacation time converted on the following basis:

11.3.1 To determine equivalent vacation hours for new fifty-six (56) hour per week, employees multiply their forty (40) hours per week vacation hours times a conversion factor of 1.4.

11.3.2 To determine equivalent vacation hours for new forty (40) hour per week employees, multiply their fifty-six (56) hour per week vacation hours times a conversion factor of .7143.

11.4 **Scheduling Leaves:**

Leaves will be scheduled, insofar as possible and practical, at those times requested by each employee. However, because of the nature of the work and the requirements that the orderly performance and continuity of municipal services be maintained, it may be necessary to limit the number or prohibit any employees from taking leaves during a particular period or at the same time. Such request, however, shall not arbitrarily be denied. In terms of scheduling leaves and resolving any conflicts which may arise, the following procedure will be used:

11.4.1 Requests for leave which are submitted during the month of December immediately preceding the calendar year will be processed giving preference to the employee's time in service, with those employees having the most time in service receiving the highest preference. Leaves scheduled pursuant to this paragraph are

normally irrevocable once approved by the Department.

Approval will be granted for up to two (2) firefighters per shift per prescheduled date. Sick leave and/or Section 4850 time shall not reduce the shifts available when selections are being made in the month of December. The parties understand that unusual circumstances such as major incidents may require an exception to this understanding and may require cancellation of all prescheduled leaves.

11.4.2 Requests for leave which are submitted during the actual calendar year will be processed giving preference to the order in which the leave requests are received, with those received first having first priority. In the event requests are received at the same time for the same leave period, then time-in-service will be the determining factor. When selections are made at times other than the month of December, the maximum number of firefighters that may be off per shift remains at two (2). However, if at the same time the request for leave is made, the department is aware that a firefighter will be off for sick leave, or will be off on Section 4850 time, on the date requested, or is scheduled to be absent for training (excluding HazMat training, and any training which is scheduled less than 30 days from the date of training), prior to receipt of the leave request, said person or persons shall be counted towards the maximum of two (2) firefighters off on leave when the request for leave is considered. Union Leave shall not count against the two (2) per shift limitation.

The parties further understand and agree that upon a citywide emergency as declared by the City Manager and approved by the City Council limitation may be placed on post December leave selection.

11.4.3 A minimum of one (1) Paramedic Firefighter will be on duty at any given time. This provision will increase to two (2) Paramedic Firefighters upon activation of a second ALS unit.

11.4.4 For the purposes of this section, "leave" includes vacation, personal leave, administrative leave and CTO.

11.5 **Minimum Vacation Leave:** The minimum annual leave will be two (2) shifts, following a four day period.

The remainder of accumulated leave may be taken when the request for leave is submitted forty-eight (48) hours in advance, upon approval of the Fire Chief.

11.6 **Earning Vacation Leave:** Full vacation leave as set forth in Section 11.1 shall be earned by:

11.6.1 An employee on sick leave with pay.

11.6.2 An employee on paid leave of absence, due to a disability arising from an on-the-job accident while working for the City.

11.6.3 An employee on jury leave.

Vacation leave as set forth in Section 11.1 shall not be earned by:

11.6.4 An employee on an unpaid leave of absence.

11.6.5 An employee on leave of absence and such leave of absence is covered by the City's private disability insurance plan.

11.7 Sick Leave During Vacation Leave:

An employee may change vacation leave to sick leave upon submission of a doctor's certificate that the employee is ill and unable to work.

11.8 Personal Leave:

Employees covered by this agreement will earn one (1) day of personal leave per year. The employee may use such leave for any purpose subject to advance approval of his/her absence.

The personal leave day may be carried over for a period of one (1) year, not to exceed two (2) work shifts total accumulation.

SECTION 12. LEAVE OF ABSENCE

12.1 Definition

A leave of absence is a privilege which may be granted to an employee wishing to leave the City service without pay and in good standing for a limited period of time.

12.2 Procedure

12.2.1 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.

12.2.2 A department head may grant an employee a leave of absence without pay for not more than six (6) twenty-four (24) hour shifts when it is in the best interest of the City. The City Manager must approve a leave of absence without pay exceeding six (6) twenty-four (24) hour shifts.

12.2.3 An employee shall be entitled to payment for any earned vacation and accumulated

overtime at the beginning of an approved leave of absence.

12.3 Unauthorized Leave of Absence

The failure of an employee to return to duty upon the termination of an authorized leave of absence is an unauthorized leave of absence.

An unauthorized leave of absence is grounds for disciplinary action, including dismissal, unless upon the employee's return, the employee furnishes reasons satisfactory to the department head and the City Manager for not having obtained an authorized leave of absence. The unauthorized leave of absence shall be treated as time not worked. The City shall deduct from the employee's pay, an amount equal to time absent from City service.

12.4 Jury Leave

When an employee is summoned for jury duty, the employee shall be granted a leave of absence for jury duty, upon presentation of the summons to the employee's department head.

An employee shall receive full pay while on leave for jury duty; provided, however, the employee must remit compensation received for jury duty, except compensation for mileage. An employee who elects to retain compensation received for jury duty shall not receive salary while on jury duty.
In the event an employee represented by the BFA is selected to serve as a juror, that employee shall not be expected to report for duty until the case has been adjudicated and the trial judge releases the jury. Upon dismissal from further jury obligation by the trial judge, the employee shall report for duty as scheduled.

12.5 Bereavement Leave

Any employee shall attempt to notify the Fire Chief in advance of an absence due to a death in the employee's family. If the Fire Chief is not readily available, such notification may be given to the Duty Chief Officer. Failure to provide such notification shall result in ineligibility for benefits under this section.

12.5.1 The Fire Chief shall allow an employee a leave of absence up to two (2) consecutive shifts to attend the funeral of a member of the employee's immediate family.

Additional time off related to the death of a member of the employee's immediate family may be granted and charged to compensatory time or vacation leave.

12.5.2 The Fire Chief may allow an employee leave of absence up to one (1) shift 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. Additional time may be charged to compensatory time or vacation leave.

12.5.3 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 member of the employee's household.

12.6 Military Leave

Military leave shall be granted in accordance with the provisions of state and federal law. An employee taking military leave shall give the employee's department head a copy of the employee's orders to report to military duty.

12.7 Maternity Leave

A pregnant employee shall be entitled to a maternity leave of absence without pay not to exceed 120 calendar days and in accordance with State law.

SECTION 13. SICK LEAVE

13.1 Eligibility and Accrual: The City agrees that employees represented by the BFA 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 twenty-four (24) 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.

13.2 Usage of Sick Leave

13.2.1 Permissible Usage of Sick Leave: Sick leave is provided to continue the salary of an eligible employee who is absent from work because of an illness.

With the prior approval of an employee's Department Head, an employee may use accumulated sick leave for medical or dental appointments. With prior approval of the employee's Department Head, an employee may use accumulated sick leave for the purpose(s) and duration specified in City policies interpreting applicable federal and/or State laws (i.e. Family Medical Leave Act [FMLA]) and California Family Rights Act [CFRA]).

13.2.2 Non-permissible Usage of Sick Leave: No employee shall be entitled to use sick leave with pay while absent from duty under any of the following conditions:

13.2.2.1 Disability arising from sickness or injury purposely self-inflicted or caused by employee's willful misconduct;

13.2.2.2 Disability arising from sickness or injury sustained while on unpaid leave of absence;

13.2.2.3 Disability arising from sickness or injury related to compensated employment other than with the City;

13.2.2.4 Disability arising from sickness or injury while receiving compensation from the City for an industrial accident pursuant to Section 13;

13.2.2.5 For absence caused by intoxication or abuse of substances, including, but not limited to, drugs and alcohol.

13.3 Accumulation

Accumulation of sick leave by all employees shall be unlimited.

13.4 Notification

To receive sick leave, an employee must notify the employee's supervisor, the on-duty supervisor or other appropriate personnel, before the employee is scheduled to begin the employee's daily duties.

13.5 Sick Leave Bank

Employees in this bargaining unit shall be eligible for benefits of the Sick Leave Bank as outlined in City Policy and Procedure #5. The BFA will be consulted regarding any substantive changes to this existing policy.

13.6 Return to Employment Following Sick Leave

When an employee returns to duty following an absence of three (3) consecutive shifts or longer, the department head or personnel officer may require a signed statement from a doctor or dentist that the employee was incapacitated and unable to perform the employee's duties throughout the entire period of sick leave.

The failure of the employee to file the statement from the doctor or dentist if requested shall result in the employee's ineligibility for sick leave benefits, unless a waiver is granted by the City Manager.

In the case of frequent use of sick leave, the employee's department head or the personnel officer may request that the employee file a doctor's statement for each such illness regardless of duration. An employee may be required to take an examination by a doctor mutually agreed to by the City and the employee. If requested by the City, the employee shall authorize consultation with the employee's doctor concerning the illness.

On the basis of such medical advice, the City Manager shall determine whether an employee is incapacitated for the duties of the employee's position and may take action the City Manager considers appropriate.

13.7 Temporary Light Duty

The City and BFA agree to incorporate into this agreement, as Attachment "A", the City's Light Duty Policy dated June 27, 1989.

SECTION 14. HOLIDAYS

14.1 Authorized Holidays

The City observes the following days as legal holidays:

Christmas Day, New Year's Day, Martin Luther King, Jr's Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and the Friday following Thanksgiving Day. For the purpose of this section, the holiday shall be the actual day of the holiday (e.g. December 25th for Christmas).

14.2 Work Performed on Holidays

14.2.1 The City and the BFA agree that public safety employees are scheduled to work on the aforementioned holidays as a matter of health and safety of the community. In lieu of the aforementioned holidays, the City agrees to pay sworn employees represented by the BFA, 1.642% of base salary per month, twelve (12) months a year in lieu of being off on the holidays. . Payment will be made twice a year on December 15th and June 15th of each City fiscal year.

14.2.2 The Fire Prevention Specialist and Fire Captain/ Administrative will observe the twelve (12) paid holidays listed in Section 13.1 plus one additional Personal Leave Day per year. For time worked on a holiday the Fire Prevention Specialist and Fire Captain/Administrative will be paid at the rate of one-and-one-half (1 1/2) times the regular rate of pay.

14.2.3 Unless otherwise directed by the Fire Chief based upon the essential operational needs to the department, a modified work schedule consisting of routine equipment and station maintenance, apparatus and equipment readiness, public education and/or customer service programs/issues, and emergency work will be in effect on designated holidays.

SECTION 15. SALARY ADMINISTRATION

15.1 Salaries

There will be no salary increases during the term of this MOU.

It is the intent of the City to remain competitive in the labor market and provide equitable salaries for its employees. Effective on the following dates, base salaries shall be adjusted by the percentage listed in Section 15.1.1 below. (See Attachment B - Salary Schedule)

A. Effective July 1, 2005 the following agencies shall be used for the purposes of salary surveys:

City of Davis, City of Dixon, City of Fairfield, City of Folsom, City of El Cerrito, City of Napa, City of Pinole, City of Richmond, City of Vacaville, City of Vallejo and Contra Costa Fire District.

B. The following components will be surveyed to determine the mean average of total compensation:

Base Salary, Education Incentive at the Bachelor's Degree rate, Holiday pay, Uniform allowance, EMT pay, PERS Retirement, and combined Insurance Costs (i.e. Medical, Dental, Vision, Life).

15.1.1 Effective July 1, 2010 in lieu holiday pay shall be reduced by 3.358% which would reduce the current rate of 5% to 1.642%.

15.1.2 The salary for Administrative Fire Captain shall be set at an amount equal to five percent (5%) above that of Fire Captain.

15.1.3 Effective July 1, 2005 the salary for Paramedic Firefighter shall be set at an amount equal to ten percent (10%) above that of Firefighter.

15.1.4 Effective July 1, 2005 the salary for Fire Engineer shall be set at an amount equal to ten percent (10%) above that of Firefighter.

15.1.5 Effective July 1, 2005 the salary for Fire Captain shall be set at an amount equal to ten percent (10%) above that of Fire Engineer.

15.2 Paramedic Captain Incumbents

Effective July 1, 2000, the classifications of Paramedic Engineer, Paramedic Captain and Admin/Paramedic Captain were hereby eliminated. There are no employees holding the classification of Paramedic Engineer. The current incumbents in the Paramedic Captain and Admin/Paramedic Captain classifications shall receive a flat dollar amount equal to the 5%

Paramedic Incentive they are currently receiving for their appropriate step in the salary range in effect on 6/30/00 (at E-Step these would be $262 & $288 respectively). The incumbents receiving this continued flat incentive amount shall continue to receive this pay so long as they maintain their Paramedic Certification. This flat incentive amount shall be calculated as part of the employee's hourly rate of pay.

15.3 Payment of Employees' PERS Contributions

15.3.1 Effective July 1, 1996, the City converted the employer-paid employee 9% P.E.R.S. contribution to salary and allow all employees in the bargaining unit to begin paying their own P.E.R.S. contribution.

15.3.2 Additionally, the City will implement Internal Revenue Code Section 414 (h) (2) which will allow all employees in the bargaining unit to defer paying taxes on their contribution to P.E.R.S. (9%) until retirement or receipt of a lump sum payment (refund).

15.4 Paramedic/Firefighter

The City agrees to pay tuition costs plus overtime pay for class time spent when in an off-duty status for continuing education and related re-certification requirements for each employee in the Paramedic series (including current incumbents identified in Section 15.2) in order to maintain the minimum requirements as set forth by the County of Solano and/or the State of California for Paramedic certification and re-certification. Continuing education must be preauthorized by the Fire Chief or his designated representative in order for the employee to be entitled to the payments provided herein.

15.4.1 The City will agree to pay tuition and re-certification costs for those employees wishing to maintain their Paramedic Certification, but who do not meet the requirements of Section 15.4. With the exception of occasional Paramedic training conducted by the Department on duty, all training will be on the employee's own time in an off duty status.

The employees utilizing this Section will assist the Department when called upon to perform Paramedic duties without additional compensation.

15.5 Salaries - New Employees

A new employee shall be appointed to the first step of the salary range to which the employee is assigned, provided, however, that a new employee may be appointed at a salary in excess of the first step when it is difficult for the City to locate qualified personnel, or when the education and previous training or experience of a new employee is substantially superior to the minimum qualifications for the classification, or (in exceptional cases) at the discretion of the City Manager.

15.6 Anniversary Date

The employee's anniversary date is the first day of the pay period if employment occurs during the first fifteen (15) days of the period; otherwise, the anniversary date is the first day of the next pay period.

The anniversary date of an employee on leave without pay shall be extended by the period of the leave.

15.7 Advancement Within Salary Range

Advancement within the salary range for a classification shall not be automatic. All increases shall be based on merit as established by a record of the employee's performance and shall require the written recommendation of the Department Head and approval by the City Manager. An employee who does not receive an in-grade salary advancement shall be notified in writing by the employee's department head as to the reason for denial.

The City Manager may adjust the salary rate of an employee to any step in the employee's existing salary range to correct gross inequities in salary or to reward outstanding achievement and performance.

15.8 Salary after Promotion or Demotion

When an employee is promoted, the employee's compensation shall be set at Step A or one step higher than the employee's current salary whichever is higher, provided, however, the employee's salary shall increase by at least 5%. The employee's new anniversary date shall be the date of the promotion.

Following the successful completion of a formal examination process, should a Paramedic Firefighter elect to accept the position of Firefighter Engineer, the employee's compensation shall be set at the step in the Firefighter Engineer salary range which is closest to their current salary step.

When an employee is demoted to a class with a lower maximum salary, the employee shall be assigned to the applicable salary step in the new class, provided, however, that there shall be at least a 5% decrease in salary assuming that the employee's service has been continuous in the new class. The employee shall retain the employee's previous anniversary date.

15.9 Salary after Transfer

When an employee is transferred from one position to another position in the same class or to another class with the same pay range, the employee shall retain the same step and the same anniversary date.

15.10 Out of Class Pay

15.10.1 After meeting department standards for acting out of class for a position, the employee shall be compensated for all time worked in that capacity by 5% additional pay at his/her regular straight-time rate of pay for regular time duty, and at time and one-half for overtime duty. Standards for acting assignments shall be as outlined in the Fire Department's Standard Operating Procedures (SOP) Manual in the SOP titled Requirements for Driving & Operating Engines (#518.00 dated 10/99) and Administrative Procedures Acting Captain Assignment (#308.00 dated 2/94). Changes to the SOP's which fall within the scope of representation will be subject to the meet and confer process.

All acting assignments shall be offered on the basis of qualifications for such assignment according to the judgment of the department head or the department head's authorized representative and shall be consistent with Personnel Rules.

15.10.2 Interim Captain: Assignment to the position of Interim Captain is determined by the fact that the Captain will be off (due to injury/illness/extended leave of absence, etc.) for nine (9) consecutive shifts or more or if the amount of time the Captain is to be off is unknown, upon completion of nine (9) shifts or more performing a Captain's duties.

Employees in the Interim Captain assignment, perform the essential job duties of the Captain including, but not limited to, supervising personnel, writing performance evaluations, directing fire suppression and controls operations, supervising and personally participating in rescue and Basic Life Support operations and taking charge of a fire station; supervising and participating in the maintenance of quarters and equipment during an assigned shift.

Employees assigned as Interim Captain shall receive a minimum of 7% additional pay and be assigned to a step in the salary range for Fire Captain which is closest to, but not less than the 7%, for the duration of said assignment. The temporary salary increase will be retroactive to the first shift of the assignment.

The City will maintain in effect a captain's eligible list. All Interim assignments shall be made from those employees on the affected shift whose names appear on the eligible list for the Fire Captain classification.

In the event there is no employee on the affected shift whose name appears on the eligible list, the assignment will be made from those employees who are also on the eligible list but working other shifts. In the event there is no eligible list, the assignment will be made from those employees on the shift who meet the minimum qualifications for the Fire Captain classification followed by those who also meet the minimum qualifications but are working other shifts.

15.11 Pay Period

The payday for each employee shall be the last day of the month or as authorized by the City Council. The City's Finance Department shall provide each employee with a copy of the employee's time sheet together with the employee's paycheck each payday.

15.12 Terminal Pay

An employee who is terminated is entitled to terminal pay for:

15.12.1 That portion of the final pay period from the first day of the final pay period to the effective date of separation. The day of separation is either the working day specified for the separation or the last day of the pay period if no date is specified;

15.12.2 Accrued vacation actually earned but not taken, subject to the provisions on leave of absence;

15.12.3 Accrued overtime;

In the case of an employee's death, the City shall pay the employee's beneficiary the sums set forth in items 1 through 3 above provided, however, that the employee must have designated a beneficiary on a form specified by the City Manager. If the form specified by the City Manager has not been completed and returned to the finance director, terminal pay shall be paid to the estate of the employee.

Terminal pay shall be paid to an employee only upon submission by the employee of all city-owned property in the employee's possession, including but not limited to, keys, badges and credit cards.

SECTION 16. PARAMEDIC/FIREFIGHTER VOLUNTARY DEMOTION

In the event an employee classified as a Paramedic/Firefighter wishes to relinquish his paramedic designation and voluntarily demote to the classification of Firefighter he/she shall be permitted to do so subject to the following terms and conditions:

16.1 There must be a vacant position in the rank of Firefighter available for him/her to fill.

16.2 A qualified paramedic is available to fill the vacancy created by the demotion.

For purposes of promotion all time served in the rank of Paramedic/Firefighter shall be considered the same as time spent in the rank of Firefighter.

SECTION 17. DEFERRED COMPENSATION

The City agrees that employees represented by the BFA may participate in the City's deferred

compensation plan.

The City agrees to request information from ICMA regarding plan expansion that would allow employees to borrow against their own ICMA deferred compensation accounts and discuss such information with BFA no later than 60 days from the adoption of this MOU. The parties agree that any plan document changes to the ICMA deferred compensation program allowing employees to borrow against their own individual account would be done at no cost to the City.

SECTION 18. UNIFORM ALLOWANCE

18.1 The uniform allowance shall be $50.00 per month.

18.2 Effective January 1, 2006, the annual Class A Uniform inspection will no longer be conducted one time each year. All sworn personnel will be required, however, to maintain at least one (1) suitable Class A Uniform to be worn when the employee is officially representing the City as directed by the Fire Chief.

The City agrees to repair or replace uniforms damaged in the line of duty. The Fire Chief or designated representative shall make the determination.

18.3 The City agrees to supply and maintain all linens such as blankets, sheets, pillows, pillowcases, and towels.

18.4 The City agrees to pay up to a maximum of $75 towards replacement of broken watches damaged while on duty.

18.5 Effective January 1, 2006, the City will provide employees with the option to wear rubber or leather (Warrington Pro) turnout boots, which shall be provided by the City.

18.6 Effective January 1, 2006, the City will provide employees with the option to wear station boots provided by the City or an alternate boot approved by the City, matching the standards of City issued boots. Employees opting to wear alternate station boots shall be reimbursed for the purchase of the alternate boots up to the cost of City provided station boots.

SECTION 19. EDUCATIONAL INCENTIVE

19.1 Employees who were employed by the City on June 30, 1989 shall continue to receive educational incentive pay in accordance with the provisions of Section 19.1 of the 1987-1989 Benicia Firefighters' Association Memorandum of Understanding. The City agrees to pay employees represented by the BFA, two and one-half percent (2-1/2%) over their base salary for completion of thirty (30) units of approved college/university courses from an accredited college/university, and seven and one-half percent (7-1/2%) over their base salary for attainment of approved Associates or Bachelors Degree.

Employees who are hired by the City on or after July 1, 1989 shall be compensated in accordance with the following formula:

19.1.1 Completion of thirty (30) units of approved courses from an accredited college/university: $70.00 per month.

19.1.2 Attainment of an approved Associates or Bachelors Degree from an accredited college/university: $210.00 per month.

19.1.3 Effective July 1, 2006 attainment of an approved Associates Degree from an accredited college/university: $210.00. Attainment of an approved Bachelor's Degree from an accredited college/university: $280.00 per month.

It is understood that an approved major shall be designated by the Fire Chief and City Manager and shall include Fire Science, Public Administration, Business Administration or other such job related course of study.

Employees who obtain an Associates or Bachelors degree may not receive the official documentation for several months. Therefore, employees who complete a degree shall notify the Personnel Department in writing within ten (10) working days of their completion of the required courses. When the official documentation is provided, the employee shall be compensated from the original date of completion.

19.2 Effective July 1, 2006 the three percent (3%) separate pay for holding the required current and valid Emergency Medical Technician 1-A Certificate will be added to base salary. The City will also reimburse each such employee for certification fees, if any, which may be required once each two (2) years.

The BFA has agreed that all employees are required to obtain and to maintain a currently effective EMT 1-A Certificate as a condition of continued employment. In the event an employee fails the EMT 1-A re-certification examination, the employee shall be offered the opportunity to retake the examination at the first available opportunity before any action is taken by the City to terminate the employee's employment. An employee will be afforded only one (1) opportunity to retake the re-certification examination.

19.3 The City and the BFA have agreed to a program whereby Paramedic employees who volunteer to do so may be utilized to conduct in-house EMT 1-A training for employees. Paramedic personnel providing such training shall be properly credentialed and/or certified instructors. The City reserves the right to approve the training program developed by Paramedic instructors for this purpose. The program and instructors shall be approved by the County of Solano and/or the State of California.

SECTION 20. <u>ADDITIONAL DUTY PAY</u>

20.1 Effective July 1, 1995 the base salary of Fire Captain was increased by $75.00 as compensation for performing a major program assignment. Major program assignments include but are not limited to the following: Volunteer Administrator, Training Officer, Hazardous Material Coordinator, Vehicle Maintenance Officer, Equipment and Safety Gear Officer, and Communications Officer. Each major program assignment will be outlined in the Standard Operating Procedures (SOP) Manual. Said increase is reflected in the salary ranges listed in Attachment B.

20.2 The City and BFA agree that a new full-time, regular classification of Fire Captain/Admin be created. The Administrative Captain shall be responsible for coordination of Emergency Medical Services, disaster preparedness, and perform other duties as assigned. The Administrative Captain shall be assigned to a forty (40) hour workweek. Salary for the Administrative Captain shall be as provided under Section 15.1 of this agreement. Vacation accrual rates, holidays, and Out of Class Pay shall be pursuant to those outlined in a side-letter dated July 1, 1991 for Fire Prevention Specialist. The incumbent assigned EMS Coordinator duties was reclassified to Administrative Captain effective July 1, 1992. Employees holding the permanent rank of Fire Captain shall not be automatically transferred into the Administrative Fire Captain position, should it become vacant.

20.3 Personnel in the Paramedic Firefighter classification who are properly certified and assigned to act as preceptors for new personnel shall receive a 5% differential in compensation during the time that are acting in that capacity.

SECTION 21. HOURS OF WORK

21.1 Application

This section is intended to define the normal hours of work per day or per week in effect at the time of execution of this agreement. Nothing contained herein shall be construed as preventing the City from restructuring the normal workday or workweek for the purpose of promoting the efficiency of municipal government; from establishing the work schedules of employees; and establishing part-time positions.

21.2 Shift Schedule

Suppression Personnel: All employees shall be scheduled to work on a regular shift, and each shift shall have a regular starting and quitting time.

Employees whose workday extends from one calendar day into another, or who work overtime from one calendar day into another, shall be considered as working on the calendar day on which they started the work.

The workweek is established under the FLSA 7(k) work period, and shall consist of fifty-six (56)

hours when averaged over a twenty-seven (27) day period on a schedule commonly known as a 3-4 plan. Each twenty-four (24) hour workday shall be considered as one (1) tour of duty.

The twenty-four (24) hour workday shall be interrupted by two (2) uninterrupted one (1) hour meal periods provided an emergency situation doesn't exist which would automatically preclude either or both.

The normal workday for full-time employees covered in this agreement shall be as follows:

24 HOUR WORK SCHEDULE

0800-1700 **May include, but is not limited to:**

Vehicle checkouts	Hydrant Maintenance
Company inspections	Special projects
Physical training	90 minutes*
Required training and/or Captains drills	Incident response
Station cleaning (may be designated on a single day)	Special meetings
	Special training
Public Education	Station Maintenance
Pre-Fire Planning	

1700-0700 ***Stand-by time**

0700-0800 **Arise, clean-up station**

* Scheduled night training shall be limited to two (2) times per month per shift as scheduled by the department.

*The 90 minute workout shall routinely be scheduled between the hours of 3:30 pm to 5:00 pm unless otherwise approved by the Fire Chief of Fire Chief's designee.

All Other Personnel:

Employees not assigned to suppression may be scheduled to work a forty (40) hour week. Employees working a forty (40) hour week schedule may submit a written request to the department head to work a 9/80 or a 4/10 work schedule. The department head may grant or deny the request based upon the existing needs of the department.

21.3 Work Schedule

Work schedules showing the shifts, workdays, and hours to which employees are assigned shall be posted on all department bulletin boards at all times. Should it be necessary, in the interest of efficient operations, to establish daily or weekly work schedules departing from the normal workday or the normal workweek, the City shall give notice of such change to the BFA as far in advance as is possible and reasonably practical. Work schedules shall not be unjustifiably

changed.

21.4 Shift Trades

There will be no limit on shift trades, which are hereby defined as trades of twenty-four (24) hours or less and which are used for the purpose of attending educational instruction courses or for responding to unanticipated events requiring the employee's personal attention. It is understood that all shift trades will be approved by the Chief or his designee by no later than the start of the shift in question. Additional advanced notice of the trade is not required. A shift trade may be approved after the start of the shift provided approval is received by the on call chief officer prior to the start of the trade.

All Shift Trades shall be repaid by the employees involved within nine (9) months of the date of the shift trade. If a shift trade is not repaid within the nine (9) month time period, the Fire Chief shall have the right to schedule the employees in order to have the shift trade repaid. The Association shall be responsible for maintaining records of shift trades and providing the Fire Chief with a biannual report on the status of shift trades.

If the individual employees involved in a shift trade are not of the same rank, the trade shall be permitted as long as the individuals are qualified to perform the duties involved in the requested trade or others on shift are available and are qualified such that minimum staffing requirements for the shift can be maintained. Inter-classification trades shall not result in any additional cost to the City. By accepting an inter-classification trade, trade participants waive any right they might otherwise have to out of class compensation for work performed on the traded shift.

21.5 Staffing

The City and BFA share the same concerns regarding the safety of firefighters which are related to the number of firefighters on duty at a given time. The parties are in agreement that at least three (3) firefighters should be on duty on each engine company. The City shall make every effort to assure that this staffing level is attained, however, the parties recognize that exigent circumstances, may, from time to time, preclude the City from attaining this objective.

21.6 48/96 Work Schedule Pilot

21.6.1 This pilot program shall commence July 1, 2006, after the Union and the Department reach agreement on the elements of the 48/96 schedule, and run for 12 months unless section 21.6.3a is used. During this period, employees who, by nature of the work, are required to work twenty-four (24) hour shifts, shall be required to work a schedule, on average, of not more than fifty-six (56) hours per workweek. This schedule shall consist of forty eight (48) hours on and ninety-six (96) hours off (XX OOOO XX OOOO XX OOOO). During this pilot program the suppression division may need to modify their work schedule, as identified in Section 21.2.

21.6.2 During the period of the pilot project, the parties shall assess the merits of the new schedule based upon criteria including, but not limited to:

- Employee productivity
- Fatigue factors
- Employee use of sick leave
- Employees' desire to continue with the work schedule

21.6.3 The parties shall meet, starting in April 2007, to discuss whether or not to continue with the 48/96 schedule or revert to the prior work schedule. If the parties do not agree in writing by June 1, 2007 to continue the 48/96 schedule, employees shall revert to the schedule that was in effect prior to implementation of the pilot 48/96 schedule, effective July 1, 2007.

21.6.4 This pilot may be terminated upon mutual agreement.

21.6.5 Whenever a shift falls on both December 24th and 25th, the shift will change to December 23rd and 25th and the shift that is scheduled to work December 22nd and 23rd will change to December 22nd and 24th.

21.6.6 The maximum number of consecutive hours worked shall not exceed 96 except in case of emergency.

SECTION 22. PROMOTIONS

When, in the City's judgment, there are sufficient, qualified applicants for promotion available within the Benicia Fire Department, the City will schedule a closed promotional examination.

If, however, in the City's judgment, there is an insufficient number of eligible and/or qualified applicants available, the City shall schedule an open promotional examination.

SECTION 23. INSURANCE

23.1 Health and Welfare

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 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.

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 for employee +1, and $79.49 for employee + family.

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 only. At that time this extra contribution shall expire and the City's contribution for all participants shall be as described above.

The City shall contribute the full premium required by the providers of the dental and vision care plans provided herein for the term of this Memorandum of Understanding.
The City shall allow employees who have dual coverage on their health plan to receive the equivalent amount of the single contribution rate as describe above; this amount is to be added to the employee's paycheck.

23.2 <u>Life Insurance</u>

The City shall pay the entire cost of providing each insurable regular, full-time employee with $30,000 group term life insurance with said policy to include accidental death and dismemberment coverage.

23.3 <u>Retiree Health Care</u>

The City and BFA agree to reopen, in conjunction with other City Employee Organizations, negotiations on possible implementation of a retiree medical insurance program. One option to be reviewed by the parties will be individual retiree medical accounts through the ICMA Retirement Program.

Any program implementation will be on a cost neutral basis to the City.

23.4 IRS 125 Plan.

The City has an IRS 125 Plan that is available to City Employees. The City agrees to maintain the IRS 125 Plan during the term of the contract in accordance with IRS regulations and as long as the IRS allows for such plan.

SECTION 24. RETIREMENT

The City shall continue in effect its contract with the Public Employees' Retirement System (PERS) for the term of this Memorandum of Understanding.

24.1 Effective January 1, 1986 the City's contract with the Public Employees' Retirement System (PERS) was amended to provide for credit for unused sick leave, as provided for in Government Code Section 20965.

24.2 The City has amended its contract with the Public Employees' Retirement System [PERS] to include the retirement benefit option of 3% @ 50 in accordance with Government Code § 21362.3. This benefit shall become effective the first of the month following the final amendment process and approval by PERS. The City and the BFA understand that this contract amendment would be prospective only from the effective date of the PERS contract amendment.

24.3 The City implemented the Fourth Tier of the 59 Survivor Benefit with CalPERS upon amendment of the PERS contract.

24.4 As soon as administratively possible, the parties agree to amend the City's contract with Public Employees Retirement System (PERS) to implement a second tier retirement benefit option of 3% at 55 and average three year compensation formula in accordance with Government Code Section 21362.3 for new hires hired on or after January 1, 2011 or hired upon effective date of the contract amendment consistent with CalPERS requirement. The employees in the second tier shall pay the entire employee share (9%) of retirement cost.

SECTION 25. GRIEVANCES

25.1 A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding or disciplinary actions.

25.2 Grievances 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.

> **25.2.1** The grievance shall be presented in writing either by the employee or by an authorized Association representative to the designated supervisor of the employee within ten (10) working days of the occurrence of the event giving rise to the grievance or within

ten (10) working days of the day on which the employee had reason to be aware of the occurrence of the event. However, only in cases where extenuating circumstances exist or for extended leave by the Grievant shall grievances be presented or accepted more than one-hundred eighty (180) calendar days past the occurrence of the event. Grievances which are not presented within these time limits shall be deemed waived and abandoned.

25.2.2 The designated supervisor shall have ten (10) working days from date of receipt of grievance in which to 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 Association representative within ten (10) working days to the Fire Chief or to such representative as he/she may designate.

25.2.3 The Fire Chief or a designated representative shall have ten (10) working days from date of receipt of grievance in which to 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 Association representative to the City Manager or to such representative as he/she may designate within ten (10) days.

25.2.4 If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this Memorandum of Understanding, such grievance shall be submitted to an Adjustment Board comprised of two (2) Association representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Association; and two (2) representatives of the City, no more than one (1) of who 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 a least three (3) members of the Board.

25.2.5 If an Adjustment Board is unable to arrive at a majority decision, either the Association or the City may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the Association and the City Manager. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post hearing briefs, if any.

25.2.6 Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

25.3 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 Association and unless such dispute falls within the definition of a grievance as set forth in Subsection 25.1.

25.4 Proposals to add to or change this Memorandum of Understanding or written agreement or agenda supplementary hereto shall not be arbitrable 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 nor 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.

25.5 No grievance involving disciplinary action taken against an employee will be entertained unless it is filed in writing with the City Manager within ten (10) working days of the time at which the affected employee was notified of such action.

25.6 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.

25.7 The provisions of this Section shall not abridge any rights to which an employee may be entitled under the Civil Service Rules and Regulations.

> **25.7.1** All grievances of employees in the Firefighter Representation Unit represented by the Association shall be processed under this Section. If the Civil Service Rules and Regulations require that a differing option be available to the employee, no action under paragraph 25.2.4 or 25.2.5 above shall be taken unless it is determined that the employee is not availing himself or herself of such option.
>
> **25.7.2** No action under paragraph 25.2.4 or 25.2.5 above shall be taken if action on the complaint or grievance has been taken by the Civil Service Commission, or if the complaint or grievance is pending before the Civil Service Commission.

If the aggrieved employee desires the assistance of a steward as provided in steps 1, 2, 3, or 4 of the grievance procedure, the City shall afford said steward reasonable time off during work hours without loss of compensation or other benefits to investigate and take up said grievance. The grievant and/or the area steward shall obtain the specific approval of the Fire Chief or, in the latter's absence, another authorized Fire Department management official before leaving their duties or work situation or assignment for the purpose of investigating and/or processing a grievance.

SECTION 26. PHYSICAL FITNESS PROGRAM

In order to further the City's effort to improve and maintain employees' health and safety when performing the many physically demanding essential duties required of a Firefighter, the City and the Benicia Firefighters' Association agree to the following:

26.1 The Benicia Firefighters' Association agrees to continue the existing mandatory physical fitness program which affords represented members time on duty for the purpose of maintaining and increasing each individual's level of fitness.

26.2 The Benicia Firefighters' Association and the City will continue the existing annual testing of individual fitness.

26.3 The City and BFA will continue to meet and confer on further implementation of a comprehensive Physical Fitness and Performance Testing Program. This meet and confer process is subject to all City impasse procedures.

SECTION 27. MAINTENANCE OF BENEFITS

The parties agree to the continuation of all rights and benefits presently enjoyed, which are not changed by this Memorandum of Understanding.

SECTION 28. CLOSING CLAUSES

28.1 The effective date of this agreement shall be July 1, 2010, and the agreement shall remain in effect until June 30, 2012. Side letters previously agreed to during the 2005 to 2010 MOU will remain in effect for the term of this MOU unless otherwise agreed to.

28.2 This agreement shall remain in force after its expiration where negotiations between the City and the BFA have not resulted in a new agreement, until such time as a new agreement is reached by both parties.

28.3 Any benefits in this agreement pertaining to work hours, shifts, or personnel assignments, may be suspended temporarily by the City where a declared emergency exists as defined by the Civil Disaster Emergencies Plan. The City shall have sole power to determine the existence of an emergency and whether benefits will be suspended.

28.4 If any section of this agreement 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 agreement shall remain in full force and effect for the duration of this agreement. In the event of invalidation of any section, the City and the BFA agree to meet within thirty (30) days for the purpose of renegotiating said section.

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

28.6 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 other alternatives, including concessions, needed to prevent layoffs of currently funded BFA members.

The City has realized a fiscal gain with respect to having three frozen positions within the Fire Department's Suppression Unit during the last budget cycle. Both parties to this Agreement expect this same fiscal policy to continue through the term of this MOU, to avoid layoffs of current suppression personnel. The BFA recognizes that if this current practice creates a fiscal loss or restricts special outside revenues that the frozen positions could be filled and the filling of the additional three positions does not prohibit triggering the reopener as defined above.

ADDENDUM

HAZARDOUS MATERIALS RESPONSE TEAM

The City intends to participate in the development, training, and staffing of the Solano County Hazardous Materials Response Team. The City intends to maintain and support three (3) Team members at all times.

Hazardous Materials Response Team member participation is considered 'voluntary'. No employee shall be required to participate on the Team, or participate in Hazardous Materials 'Technician' or 'Specialist' training. All hours worked will be compensated in accordance with applicable Memorandum of Understanding sections.

The following factors shall be used by the City to determine current and future appointments of Team members and/or Alternates: (1) Ideally, one (1) Team Member per shift, but not required, (2) Past job performance, (3) Expressed interest in training, (4) Recommendation of company officer, (5) Positive attitude, (6) Prior Hazardous Materials experience, (7) Seniority will be used as a factor when all other factors are equal. Employee rank (firefighter, firefighter/paramedic, engineer, captain) shall not be used as criteria for selection. No Team or Alternate applicant shall be evaluated with respect to his/her residential location to the City of Benicia. Applicants for Team or Alternate positions shall receive, from the Fire Chief or his/her designee, written notification of appointment to either position within 30 days of completing an interview. Additionally, a written explanation to applicants who are not appointed as Team members or Alternates will be sent to each applicant that outlines areas of improvement that would increase the employee's chances of future appointment. There will be no retaliation against a Team Member or Alternate who resigns from the Program.

The City authorizes training of employees to the minimum qualifications to be a Team Member and will support any necessary training for approved Benicia Fire Department Team Members to maintain this level of certification. Training support of Alternate Members will be limited to minimum requirements to maintain Hazardous Materials Team Certification but will not include the on going drills. Team Alternates shall be utilized first to fill Team positions that become vacant.

The City will announce future Team or Alternate vacancies to all Benicia Fire Department personnel covered under the current Memorandum of Understanding 30 days prior to appointing new Team Members or Alternates. The City agrees to announce vacancies, appoint candidates, and provide Hazardous Materials Team training to qualified employees when vacancies on the Team occur, and Alternates are exhausted. It is understood that the City is not obligated to maintain an 'Alternates List' beyond the scope of the Team's initial training.

The City will pay any and all costs associated with the Team Members' initial and on-going training, and utilization by the Team during call back. Hazardous Materials Response Team

Members, upon initial completion of Hazardous Materials training and upon the date the Solano County Hazardous Materials Team becomes functional (i.e. able and available to respond to incidents), shall receive 5% additional compensation on base pay. This rate shall be paid each pay period irrespective of whether or not there was an actual Hazardous Materials call back. The Team Members will also serve as Hazardous Materials Coordinators for the Department, as assigned, to provide extra hazardous materials related services such as hazardous materials training (limited to their own scope of training), equipment/supplies evaluation and recommendation, Hazardous Materials incident assistance, response planning and procedures development, etc.

The City maintains the right to terminate or change the scope of its participation in the Solano County Hazardous Materials Response Team at any time. In the event termination occurs, the 5% compensation for Team Members will end upon 30 days notice by the City.

Dated:

BENICIA FIREFIGHTERS ASSOCIATION

_____

Todd Matthews
President

_____

Jason Fein
Vice President

_____

Jeff Davidson

_____

Greg Petersen

_____

Jeff Toynbee

_____

Ken Akins, Representative
University Research and Associates

CITY OF BENICIA

_____

Brad Kilger
City Manager

_____

Anne Cardwell,
Administrative Services Director

_____

Dania Torres Wong, RSHS, Representative

_____

Heather Mc Laughlin
City Attorney

ATTACHMENT A

TEMPORARY LIGHT DUTY

I. OBJECTIVE

The Light Duty Program is designed to restore to productive status as soon as possible, employees who are recovering from an injury or illness until such time as possible they can resume the full work requirements of their position.

II. PURPOSE

To provide, where appropriate, for the return to work as soon as possible of both industrially and non-industrially injured and/or ill employees.

To provide a safe and cost effective system of utilizing personnel resources.

To limit and control the nature of duties assigned to personnel with known physical limitations so that productive assignments can be performed by the employee without fear of aggravating the disability.

To maintain an orderly procedure for monitoring employees on light duty assignments. Employees entitlement or denial to benefits under this program shall be in compliance with California Workers' Compensation Law where applicable.

III. SCOPE

1. Non-Industrial Injury or Illness

An employee on non-industrial sick leave will not be required by the City to return to work in a light duty capacity prior to his being released by his/her physician for the performance of duties. However, the City will entertain requests from employees suffering from non-industrial related injuries or illnesses who have been off work for at least ten (10) shifts, to return to light duty in the event that they wish to avoid exhausting all of their sick leave or in those cases where all remaining sick leave has been used. The Fire Chief may waive the requirement of a ten (10) shift waiting period when warranted in his discretion. In any case, the employee must provide a written Doctor's release authorizing light duty work.

Employees that have received medical clearance to return to work on “light/modified duty” may take up to seven calendar days from the date they are cleared to return to work to make arrangements to return to work provided those days are taken as vacation or comp time and

unpaid if no vacation or comp time leave balances exists.

2. Industrial Injury or Illness

An employee disabled as the result of an industrial injury or illness may be required by the City as a condition of continued employment to return to work in a light duty status if his/her physician releases the employee for the performance of light duty work. Such employees released for light duty work shall provide the Personnel Officer with a written light duty release from the doctor promptly upon receiving same. Such light duty assignment shall continue until the physician releases the employee for full duty.

The City reserves the right to exercise its prerogative to protect itself against excessive future liability and insurance risk, and the employee against further aggravation and/or injury. Therefore, light duty assignments will be evaluated and assigned on a case-by-case basis.

IV. PROCEDURE

1. Upon receiving notice of the release of a temporarily disabled employee for light duty work, a determination will be made by the Personnel Officer on the appropriateness of assigning light duty to the injured employee. Such determination shall take into account the opinion and recommendation of the disabled employees treating physician or health care provider. The employee must provide the physician's (or other health care providers) medical release form specifying all work limitations.

2. If the above determination results in a finding that the employee is able to return to a light duty assignment, the Personnel Officer will consult in advance with the Department Head about the availability of a light duty assignment for the employee.

3. If it is determined that the employee can be temporarily assigned to light duty (within the division of original assignment), the employee will be returned to light duty work.

4. Particular duty assignments will be based on the department needs and priorities, individual capabilities, physical limitations and estimated duration of illness/injury.

5. If light duty is not available within the Fire Department an appropriate substitute shall be sought by the Personnel Officer. If such a substitute is available, the employee shall be returned to work in such substitute position.

Work requirements, including the number of hours worked and/or shifts and classifications, may be varied to meet the objectives of this program; provided, however, that such schedules shall not exceed the standard straight-time hourly work week.

6. If no light duty work is available within the limitations set by the physician, the employee will

remain on a "no work" status and continue to receive those benefits for which they are eligible.

Light duty assignments may continue until such time as the disabled employee is given a full and complete medical release to resume normal work activities.

Employees that have received medical clearance to return to work on “light/modified duty” may take up to seven calendar days from the date they are cleared to return to work to make arrangements to return to work provided those days are taken as vacation or comp time and unpaid if no vacation or comp time leave balances exists.

V. COMPENSATION

When performing light duty work assignments in accordance with this section, employee shall receive their normal salary and benefits for their regular classification of employment.

Employees assigned to light duty work assignments shall not be required to perform the duties of a higher paid classification.

At such time as an industrially injured employee is assigned to light duty pursuant to the provisions of this policy, the employee will no longer be entitled to Section 4850, temporary disability benefits.

ATTACHMENT B

	AS OF	AS OF	AS OF	AS OF	AS OF
Date	1/1/09	1/1/09	1/1/09	1/1/09	1/1/09
Step	A	B	C	D	E
TITLE					
Fire Captain	7292	7657	8040	8442	8864
Firefighter	6027	6328	6644	6977	7325
Firefighter/Engineer	6629	6961	7309	7674	8058
Paramedic/Firefighter	6629	6961	7309	7674	8058

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

CITY OF BENICIA

AND

BENICIA FIREFIGHTERS ASSOCIATION (BFA)

JULY 1, 20~~05~~10

TO

JUNE 30, 20~~10~~12

Benicia Fire Department
Memorandum of Understanding

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SECTION 1. PREAMBLE

This Agreement is entered into by the City of Benicia, hereinafter referred to as the "City," and the Benicia Firefighters Association, hereinafter referred to as the "BFA," for the purpose of promoting harmonious relations between the City and the Firefighters, 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 specifically stated herein.

SECTION 2. RECOGNITION

2.1 The BFA is hereby recognized by the City as the bargaining agent for the Firefighters of the City, and for employees properly included in the said bargaining unit, under the conditions of the State law, and City ordinances providing for collective bargaining for Firefighter employees.

2.2 Both parties aver that this agreement sets forth the terms and conditions to which each party agrees to be bound, and that each agreement has been reached voluntarily without undue or unlawful coercion or force by either party.

SECTION 3. NON-DISCRIMINATION

3.1 The City will not discriminate against any employee because of race, color, creed, sex, age, or national origin; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in the BFA, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of the BFA.

3.2 The BFA shall not discriminate against any employee assigned to the Benicia Firefighters representation unit because of membership or non-membership in the BFA or because of race, creed, color, national origin, sex or age.

SECTION 4. EMPLOYEE RIGHTS

4.1 Employees shall have the right to fair and equal treatment in all aspects of employment conditions.

4.2 Neither management nor its representatives shall exercise their rights and authority in relationship to conditions of employment in a capricious, arbitrary, or unreasonable manner.

4.3 Employees shall not have any formal punitive personnel action taken which will result in any loss of pay or benefits, unless the employee is notified in writing as to the reason or reasons thereof and is given reasonable opportunity to respond.

4.4 An employee's salary shall not be directly deposited in the bank by the City without the

employee's consent.

4.5 All investigations, disciplinary actions and administrative appeals shall comply with the provisions of the Firefighter Procedural Bill of Rights Act (Government Code Section 3250, et seq) limited to only those classifications in this bargaining unit that FOBOR applies to.

SECTION 5. ASSOCIATION BUSINESS

5.1 The City agrees to provide space on bulletin boards to the BFA for the announcement of meetings, election of officers of the BFA and any other material related to the BFA business. Furthermore, the BFA shall not post material detrimental to the labor-management relationship nor of a political or controversial nature. Subject to the City's Policies including the limitations in this section, the BFA may utilize City telephones, U.S. Mail, the City's Interdepartmental mail system and/or City's electronic mail system to communicate with local association representatives and members in their workplaces, provided this use does not generate a cost to the City.

5.2 No BFA member or representative shall solicit members, engage in organizational work, or participate in other BFA activities during working hours on the City's premises except as provided for in the processing of grievances, or during periods of negotiations to update the membership on the progress of said negotiations. A BFA representative shall have thirty (30) minutes of scheduled time with any new hire during that employee's ~~initial three (3) week orientation period~~ initial month of employment~~.~~ This time shall be scheduled between the hours of 0800 and 1600 in coordination with the ~~Training Officer~~ Fire Chief or Fire Chief's designee.

5.3 BFA members or representatives may be permitted to use suitable facilities on the City's premises to conduct BFA business during non-work hours upon obtaining permission from the City's Personnel Officer or his designated representative. Any additional costs involved in such use must be paid for by the BFA.

5.4 BFA representatives shall be permitted to investigate and discuss grievances during working hours on the City's premises if notification is given to the Personnel Officer or his/her designated representative. If the BFA representative is an employee of the City, he/she shall request from his/her immediate supervisor, reasonable time off from his/her regular duties to process such grievances. The City will provide a reasonable number of employees with time off, if required, to attend negotiating meetings.

5.5 The City shall recognize one (1) employee and one (1) alternate designated by the Union on each shift to act as the delegate and representative of the union.

The Union shall provide the Fire Chief with a list, in writing, of the names of the designated stewards and alternates on each shift, and of any change in same. The City shall not be required

to recognize any steward or alternate whose name is not on the list. The alternate steward shall function only in the absence from duty of the regular steward.

Stewards shall conduct their activities at such times and in such manner as not to impede Fire Department operations pursuant to Section 5.2 of this Memorandum of Understanding.

5.6 A. Officers, stewards and other members of the BFA, as designated by the Association President, shall be granted leave from duty with regular straight time pay for Association business such as attending training session, conferences, etc. of benefit to the bargaining unit, provided that the total leave provided by the City for such purpose shall not exceed 180 hours in any fiscal year. At least two (2), but preferably five (5) days notice to the Fire Chief is required, unless waived by the Fire Chief.

B. On July 1, of each year, the City shall deduct up to six (6) hours from the vacation and/or compensatory time leave accruals for each bargaining unit member to create the bank of hours to be used pursuant to paragraph (A) above. The BFA shall notify the City by May 1 of each year as to the amount of leave to be deducted from the coming fiscal year. In the event no notification is given, the amount of the deduction shall remain the same as the previous year. Any portion of the bank unused in any fiscal year shall be carried over to the following year and the bank accumulation shall be unlimited.

C. One (1) hour will be deducted from the leave bank for each hour an employee is excused for Union leave. If an overtime assignment is necessary to accommodate the leave request, one and one-half (1 ½) hours will be deducted from the leave bank for each hour the employee is excused for Union leave.

D. There shall be no cost to the City for hours used in accordance with this section.

SECTION 6. <u>OVERTIME WORK/COMP/RECALL/SAFETY COMMITTEE</u>

6.1 **<u>Overtime Work:</u>** All work performed in excess of an employee's normal workday or in excess of an employee's normal workweek shall be considered overtime work.

The parties agree that assignments of overtime work shall rest solely with the department head or the designated representative. The parties agree that the assignment of overtime work is on an involuntary basis and any employee refusing assignment of such work is subject to disciplinary action deemed appropriate by the department head.

6.2 **<u>Compensation for Overtime Work:</u>** Employees performing compensable overtime work shall be paid time and one-half at their straight-time hourly rate of pay. This overtime rate shall be all inclusive and no additional compensation shall be paid.

6.3 **<u>Compensatory Time:</u>** Employees may, at the election of the employee, be compensated for overtime work with compensatory time off in lieu of overtime pay. Compensatory time shall

accrue at the overtime rate subject to the limitations of the Fair Labor Standards Act and implementing regulations thereto. Use of Compensatory Time-Off shall be pursuant to the provisions of Leave Usage under section 11.4 of this Memorandum of Understanding. The City and BFA agree that this procedure meets FLSA requirements.

6.4 **Recall:** If an employee is recalled to work at a time other than his/her scheduled work shift, he/she shall be credited with a minimum of two (2) hours at one and one-half (1-1/2) times his/her straight-time hourly rate of pay.

6.5 **Safety Committee:** The City agrees that at least one (1) member of the BFA representation unit shall serve on the Safety Committee. The BFA member of the Safety Committee may attend all meetings of the Safety Committee which are held while he/she is in an on-duty status. The BFA agrees that no overtime or additional compensation will be authorized for the Safety Committee member.

SECTION 7. AGENCY SHOP

7.1 **Agency Shop:** As a condition of continuing employment, employees shall become and remain members of the Union or shall pay to the Union a service fee in lieu thereof. Such service fee shall be established by the Union and shall not exceed that portion of the Union's dues and initiation fees (herein after collectively termed "service fee") paid by members of the Union as are expended by the Union in fulfilling its responsibilities for representing members of the Representation Unit in the negotiation and administration of the Memorandum of Understanding. Initiation fees shall only apply to employees hired after implementation of this agreement. The Union shall comply with the rules governing the establishment of agency shop fees as set forth in the U.S. Supreme Court's decision in March, 1986 in Chicago Teachers Union v. Hudson.

7.2 **Implementation:** Not later than thirty (30) days after approval of this Agency Shop Agreement, the City shall deliver to each employee subject to this Memorandum of Understanding who is not also a member of the Union a notice advising that the City has entered into an Agency Shop Agreement with the Union and that all employees subject to the Memorandum of Understanding must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Union dues or a service fee, or a charitable contribution equal to the service fee.

7.3 **Payroll Deductions:** The City shall deduct Union dues or service fees and premiums for approved insurance programs from the employee's pay in conformity with State and City regulations. The City shall promptly pay over to the designated payee all sums so deducted. The City shall also periodically provide the Union with a list of all persons making charitable deductions pursuant to the religious exemption granted herein.

7.4 **Hold Harmless:** The Union shall indemnify, defend, and hold harmless the City, its officers, employees, and agents acting on its behalf from and against any and all losses, damages,

costs, expenses, claims, demands, actions, suits, judgments and other forms of liability arising out of the application or enforcement of this Section. In no event shall the City be required to pay from its own funds Union dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

7.5 Election: The election to implement the provisions of this agreement shall not prohibit or restrict an election to rescind this Section as provided for by Section 3502.5 of the Government Code.

7.6 Waiver of Election for Newly-Represented Employees and New Representation Units: The accreditation of classifications and/or employees to representation units set forth in this memorandum of Understanding shall not require an election pursuant to subsection 6 herein for the application of this Agency Shop provisions to such classifications and/or employees. The recognition of newly-established bargaining units and inclusion of same within this Memorandum of Understanding shall also not require an election pursuant to Subsection 7 herein for the application of this Agency Shop to such units.

SECTION 8. NO STRIKE

The BFA agrees that participation in a strike, shall subject employees to disciplinary action, up to and including discharge. The BFA, its representatives, or members shall not engage or cause, instigate, encourage, sanction, or condone a strike of any kind. No employee shall refuse to cross any picket line in the conduct of official City business nor shall the BFA, its representatives, or members, discriminate in any way toward anyone who refuses to participate in a strike.

"Strike" means the concerted failure to perform or report to duty, for the purpose of inducing, influencing, or coercing a change in the conditions of compensation, or the rights, privileges, or obligations of employment.

SECTION 9. MANAGEMENT RIGHTS

The employee organization BFA, agrees that the City retains all its remaining rights and authority under law and expressly and exclusively retains its management rights not affected by this agreement 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; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons; maintain the efficiency of government operations; determine the methods, means and numbers and 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 subcontract any work 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 the technology of performing its work.

SECTION 10. SENIORITY

10.1 The Fire Department shall establish and maintain two (2) seniority lists, one by total service in the department and one by time in each classification held by the employee. They shall be brought up to date on July 1 of each year and immediately posted in both Fire Stations and the Fire Prevention Office. A copy of the same shall be provided to the Union. Any objections to the seniority lists, as posted shall be reported to the Fire Chief in written form within ten (10) working days or it shall stand approved.

10.2 Department Seniority shall be followed in the selection of vacations.

10.3 Seniority in each classification shall include all service in a classification since date of original regular appointment in said classification under the City's classified Civil Service System, without break in City service, regardless of a temporary filling of another classification. If there is a tie in seniority in rank then the individual's score on the eligible list will be used to break the tie.

10.4 Seniority in rank will be considered in all transfers and in the filling of all vacancies until such vacancies are filled by promotion or by limited appointment. Where all else is equal, seniority in rank will be used in breaking a tie.

SECTION 11. VACATION LEAVE AND ANNUAL PERSONAL LEAVE

11.1 Except for those employees who are discharged, dismissed following an absence without leave, or otherwise terminated for cause, the City shall grant vacations to its employees. Employees covered by this Agreement shall be entitled to accumulate vacation time in accordance with the following schedule:

Years of Service	Shifts Off Per Year
Less than 4 years	7
Beginning 4th year	10

Beginning 7th year	11
Beginning 11th year	12
Beginning l4th year	13

Employees assigned to a forty (40) hour workweek shall accrue vacation in accordance with the following schedule:

Years of Service	**Shifts**	**Vacation Days**
Less than 4 years	7	15.0
Beginning 4th year	10	21.4
Beginning 7th year	11	23.6
Beginning 11th year	12	25.7
Beginning 14th year	13	27.9

11.2 The vacation accrual limit will equal double the shifts allowed per year. The accrual limit will be imposed on December 3lst of each year.

11.3 **Vacation Conversion Procedure:** Employees who may be reassigned from a fifty-six (56) hour workweek to a forty (40) hour workweek, or vice versa, for more than 30 day periods, shall have their accrued vacation time converted on the following basis:

11.3.1 To determine equivalent vacation hours for new fifty-six (56) hour per week, employees multiply their forty (40) hours per week vacation hours times a conversion factor of 1.4.

11.3.2 To determine equivalent vacation hours for new forty (40) hour per week employees, multiply their fifty-six (56) hour per week vacation hours times a conversion factor of .7143.

11.4 **Scheduling Leaves:**

Leaves will be scheduled, insofar as possible and practical, at those times requested by each employee. However, because of the nature of the work and the requirements that the orderly performance and continuity of municipal services be maintained, it may be necessary to limit the number or prohibit any employees from taking leaves during a particular period or at the same time. Such request, however, shall not arbitrarily be denied. In terms of scheduling leaves and resolving any conflicts which may arise, the following procedure will be used:

11.4.1 Requests for leave which are submitted during the month of December immediately preceding the calendar year will be processed giving preference to the employee's time in service, with those employees having the most time in service receiving the highest preference. Leaves scheduled pursuant to this paragraph are

normally irrevocable once approved by the Department.

Approval will be granted for up to two (2) firefighters per shift per prescheduled date. Sick leave and/or Section 4850 time shall not reduce the shifts available when selections are being made in the month of December. The parties understand that unusual circumstances such as major incidents may require an exception to this understanding and may require cancellation of all prescheduled leaves.

11.4.2 Requests for leave which are submitted during the actual calendar year will be processed giving preference to the order in which the leave requests are received, with those received first having first priority. In the event requests are received at the same time for the same leave period, then time-in-service will be the determining factor. When selections are made at times other than the month of December, the maximum number of firefighters that may be off per shift remains at two (2). However, if at the same time the request for leave is made, the department is aware that a firefighter will be off for sick leave, or will be off on Section 4850 time, on the date requested, or is scheduled to be absent for training (excluding HazMat training, and any training which is scheduled less than 30 days from the date of training), prior to receipt of the leave request, said person or persons shall be counted towards the maximum of two (2) firefighters off on leave when the request for leave is considered. Union Leave shall not count against the two (2) per shift limitation.

The parties further understand and agree that upon a citywide emergency as declared by the City Manager and approved by the City Council limitation may be placed on post December leave selection.

11.4.3 A minimum of one (1) Paramedic Firefighter will be on duty at any given time. This provision will increase to two (2) Paramedic Firefighters upon activation of a second ALS unit.

11.4.4 For the purposes of this section, "leave" includes vacation, personal leave, administrative leave and CTO.

11.5 **Minimum Vacation Leave:** The minimum annual leave will be ~~three (3) shifts. The three (3) shifts shall~~ two (2) shifts, following a four day ~~off~~ period.

The remainder of accumulated leave may be taken when the request for leave is submitted forty-eight (48) hours in advance, upon approval of the Fire Chief.

11.6 **Earning Vacation Leave:** Full vacation leave as set forth in Section 11.1 shall be earned by:

11.6.1 An employee on sick leave with pay.

11.6.2 An employee on paid leave of absence, due to a disability arising from an on-the-job accident while working for the City.

11.6.3 An employee on jury leave.

Vacation leave as set forth in Section 11.1 shall not be earned by:

11.6.4 An employee on an unpaid leave of absence.

11.6.5 An employee on leave of absence and such leave of absence is covered by the City's private disability insurance plan.

11.7 Sick Leave During Vacation Leave:

An employee may change vacation leave to sick leave upon submission of a doctor's certificate that the employee is ill and unable to work.

11.8 Personal Leave:

Employees covered by this agreement will earn one (1) day of personal leave per year. The employee may use such leave for any purpose subject to advance approval of his/her absence.

The personal leave day may be carried over for a period of one (1) year, not to exceed two (2) work shifts total accumulation.

SECTION 12. LEAVE OF ABSENCE

12.1 Definition

A leave of absence is a privilege which may be granted to an employee wishing to leave the City service without pay and in good standing for a limited period of time.

12.2 Procedure

12.2.1 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.

12.2.2 A department head may grant an employee a leave of absence without pay for not more than six (6) twenty-four (24) hour shifts when it is in the best interest of the City. The City Manager must approve a leave of absence without pay exceeding six (6) twenty-four (24) hour shifts.

12.2.3 An employee shall be entitled to payment for any earned vacation and accumulated

overtime at the beginning of an approved leave of absence.

12.3 Unauthorized Leave of Absence

The failure of an employee to return to duty upon the termination of an authorized leave of absence is an unauthorized leave of absence.

An unauthorized leave of absence is grounds for disciplinary action, including dismissal, unless upon the employee's return, the employee furnishes reasons satisfactory to the department head and the City Manager for not having obtained an authorized leave of absence. The unauthorized leave of absence shall be treated as time not worked. The City shall deduct from the employee's pay, an amount equal to time absent from City service.

12.4 Jury Leave

When an employee is summoned for jury duty, the employee shall be granted a leave of absence for jury duty, upon presentation of the summons to the employee's department head.

An employee shall receive full pay while on leave for jury duty; provided, however, the employee must remit compensation received for jury duty, except compensation for mileage. An employee who elects to retain compensation received for jury duty shall not receive salary while on jury duty.
In the event an employee represented by the BFA is selected to serve as a juror, that employee shall not be expected to report for duty until the case has been adjudicated and the trial judge releases the jury. Upon dismissal from further jury obligation by the trial judge, the employee shall report for duty as scheduled.

12.5 Bereavement Leave

Any employee shall attempt to notify the Fire Chief in advance of an absence due to a death in the employee's family. If the Fire Chief is not readily available, such notification may be given to the Duty Chief Officer. Failure to provide such notification shall result in ineligibility for benefits under this section.

12.5.1 The Fire Chief shall allow an employee a leave of absence up to ~~one (1)~~ two (2) consecutive shifts to attend the funeral of a member of the employee's immediate family. ~~The employee may be granted one (1) additional shift of paid leave if out of state travel is required.~~

Additional time off related to the death of a member of the employee's immediate family may be granted and charged to compensatory time or vacation leave.

12.5.2 The Fire Chief may allow an employee leave of absence up to one (1) shift 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. Additional time may be charged to compensatory time or vacation leave.

12.5.3 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 member of the employee's household.

12.6 Military Leave

Military leave shall be granted in accordance with the provisions of state and federal law. An employee taking military leave shall give the employee's department head a copy of the employee's orders to report to military duty.

12.7 Maternity Leave

A pregnant employee shall be entitled to a maternity leave of absence without pay not to exceed 120 calendar days and in accordance with State law.

SECTION 13. SICK LEAVE

13.1 Eligibility and Accrual: The City agrees that employees represented by the BFA 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 twenty-four (24) 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.

13.2 Usage of Sick Leave

13.2.1 Permissible Usage of Sick Leave: Sick leave is provided to continue the salary of an eligible employee who is absent from work because of an illness.

With the prior approval of an employee's Department Head, an employee may use accumulated sick leave for medical or dental appointments. With prior approval of the employee's Department Head, an employee may use accumulated sick leave for the purpose(s) and duration specified in City policies interpreting applicable federal and/or State laws (i.e. Family Medical Leave Act [FMLA]) and California Family Rights Act [CFRA]).

13.2.2 Non-permissible Usage of Sick Leave: No employee shall be entitled to use sick leave with pay while absent from duty under any of the following conditions:

13.2.2.1 Disability arising from sickness or injury purposely self-inflicted or

caused by employee's willful misconduct;

13.2.2.2 Disability arising from sickness or injury sustained while on unpaid leave of absence;

13.2.2.3 Disability arising from sickness or injury related to compensated employment other than with the City;

13.2.2.4 Disability arising from sickness or injury while receiving compensation from the City for an industrial accident pursuant to Section 13;

13.2.2.5 For absence caused by intoxication or abuse of substances, including, but not limited to, drugs and alcohol.

13.3 Accumulation

Accumulation of sick leave by all employees shall be unlimited.

13.4 Notification

To receive sick leave, an employee must notify the employee's supervisor, the on-duty supervisor or other appropriate personnel, before the employee is scheduled to begin the employee's daily duties.

13.5 Sick Leave Bank

Employees in this bargaining unit shall be eligible for benefits of the Sick Leave Bank as outlined in City Policy and Procedure #5. The BFA will be consulted regarding any substantive changes to this existing policy.

13.6 Return to Employment Following Sick Leave

When an employee returns to duty following an absence of three (3) consecutive shifts or longer, the department head or personnel officer may require a signed statement from a doctor or dentist that the employee was incapacitated and unable to perform the employee's duties throughout the entire period of sick leave.

The failure of the employee to file the statement from the doctor or dentist if requested shall result in the employee's ineligibility for sick leave benefits, unless a waiver is granted by the City Manager.

In the case of frequent use of sick leave, the employee's department head or the personnel officer may request that the employee file a doctor's statement for each such illness regardless of duration. An employee may be required to take an examination by a doctor mutually agreed to by

the City and the employee. If requested by the City, the employee shall authorize consultation with the employee's doctor concerning the illness.

On the basis of such medical advice, the City Manager shall determine whether an employee is incapacitated for the duties of the employee's position and may take action the City Manager considers appropriate.

13.7 Temporary Light Duty

The City and BFA agree to incorporate into this agreement, as Attachment "A", the City's Light Duty Policy dated June 27, 1989.

SECTION 14. HOLIDAYS

14.1 Authorized Holidays

The City observes the following days as legal holidays:

> Christmas Day, New Year's Day, Martin Luther King, Jr's Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and the Friday following Thanksgiving Day. For the purpose of this section, the holiday shall be ~~considered the day on which it is celebrated~~ the actual day of the holiday (e.g. December 25th for Christmas).

14.2 Work Performed on Holidays

14.2.1 The City and the BFA agree that public safety employees are scheduled to work on the aforementioned holidays as a matter of health and safety of the community. In lieu of the aforementioned holidays, the City agrees to pay sworn employees represented by the BFA, ~~3.75~~1.642% of base salary per month, twelve (12) months a year in lieu of being off on the holidays. ~~Effective July 1, 2006, this amount shall increase to 5% of base salary~~. Payment will be made twice a year on December 15th and June 15th of each City fiscal year.

14.2.2 The Fire Prevention Specialist and Fire Captain/ Administrative will observe the twelve (12) paid holidays listed in Section 13.1 plus one additional Personal Leave Day per year. For time worked on a holiday the Fire Prevention Specialist and Fire Captain/Administrative will be paid at the rate of one-and-one-half (1 1/2) times the regular rate of pay.

14.2.3 Unless otherwise directed by the Fire Chief based upon the essential operational needs to the department, a modified work schedule consisting of routine equipment and station maintenance, apparatus and equipment readiness, public education and/or

customer service programs/issues, and emergency work will be in effect on designated holidays.

SECTION 15. SALARY ADMINISTRATION

15.1 Salaries

There will be no salary increases during the term of this MOU.

It is the intent of the City to remain competitive in the labor market and provide equitable salaries for its employees. Effective on the following dates, base salaries shall be adjusted by the percentage listed in Section 15.1.1 below. (See Attachment B - Salary Schedule)

A. Effective July 1, 2005 the following agencies shall be used for the purposes of salary surveys:

City of Davis, City of Dixon, City of Fairfield, City of Folsom, City of El Cerrito, City of Napa, City of Pinole, City of Richmond, City of Vacaville, City of Vallejo and Contra Costa Fire District.

B. The following components will be surveyed to determine the mean average of total compensation:

Base Salary, Education Incentive at the Bachelor's Degree rate, Holiday pay, Uniform allowance, EMT pay, PERS Retirement, and combined Insurance Costs (i.e. Medical, Dental, Vision, Life).

15.1.1

~~Effective FY 2005-06:~~
~~7/1/2005 1.5% increase (COLA)~~
~~1/1/2006 6.93% increase (this number includes a 1.5% COLA plus equity based on total compensation components listed in Section 15.1B bringing positions to 2005 survey average)~~

~~Effective FY 2006-07:~~
~~7/1/2006 2% increase (COLA)~~
~~1/1/2007 2% increase (COLA)~~

~~Effective FY 2007-08:~~
~~Effective July 1, 2007, all employees shall receive a general salary increase equivalent to the difference between the total compensation for the Firefighter rank in the City and the mean average of total compensation as of July 1, 2007 for the Firefighter rank in the agencies listed in 15.1.A above.~~

~~Effective FY 2008-09:~~
~~7/1/2008 2% increase (COLA)~~
~~1/1/09 2% increase (COLA)~~
~~Wage increase may be deferred up to 12 months if General Fund Revenues drop by more than 10% compared to FY 2007-08 and all General Fund expenditures drop by amount equivalent to cost of salary increase.~~

~~Effective FY 2009-10~~
~~Effective July 1, 2009, all employees shall receive a general salary increase equivalent to the difference between the total compensation for the Firefighter rank in the City and the mean average of total compensation as of July 1, 2009 for the Firefighter rank in the agencies listed in 15.1.A above.~~

Effective July 1, 2010 in lieu holiday pay shall be reduced by 3.358% which would reduce the current rate of 5% to 1.642%.

~~Wage increase may be deferred up to 12 months if General Fund Revenues drop by more than 10% compared to FY 2008-09 and all General Fund expenditures drop by amount equivalent to cost of salary increase.~~

~~A Market Survey will be conducted in 2010 in preparation for negotiations for a successor agreement.~~

15.1.2 The salary for Administrative Fire Captain shall be set at an amount equal to five percent (5%) above that of Fire Captain.

15.1.3 Effective July 1, 2005 the salary for Paramedic Firefighter shall be set at an amount equal to ten percent (10%) above that of Firefighter.

15.1.4 Effective July 1, 2005 the salary for Fire Engineer shall be set at an amount equal to ten percent (10%) above that of Firefighter.

15.1.5 Effective July 1, 2005 the salary for Fire Captain shall be set at an amount equal to ten percent (10%) above that of Fire Engineer.

15.2 Paramedic Captain Incumbents

Effective July 1, 2000, the classifications of Paramedic Engineer, Paramedic Captain and Admin/Paramedic Captain were hereby eliminated. There are no employees holding the classification of Paramedic Engineer. The current incumbents in the Paramedic Captain and Admin/Paramedic Captain classifications shall receive a flat dollar amount equal to the 5% Paramedic Incentive they are currently receiving for their appropriate step in the salary range in effect on 6/30/00 (at E-Step these would be $262 & $288 respectively). The incumbents

receiving this continued flat incentive amount shall continue to receive this pay so long as they maintain their Paramedic Certification. This flat incentive amount shall be calculated as part of the employee's hourly rate of pay.

15.3 Payment of Employees' PERS Contributions

15.3.1 Effective July 1, 1996, the City converted the employer-paid employee 9% P.E.R.S. contribution to salary and allow all employees in the bargaining unit to begin paying their own P.E.R.S. contribution.

15.3.2 Additionally, the City will implement Internal Revenue Code Section 414 (h) (2) which will allow all employees in the bargaining unit to defer paying taxes on their contribution to P.E.R.S. (9%) until retirement or receipt of a lump sum payment (refund).

15.4 Paramedic/Firefighter

The City agrees to pay tuition costs plus overtime pay for class time spent when in an off-duty status for continuing education and related re-certification requirements for each employee in the Paramedic series (including current incumbents identified in Section 15.2) in order to maintain the minimum requirements as set forth by the County of Solano and/or the State of California for Paramedic certification and re-certification. Continuing education must be preauthorized by the Fire Chief or his designated representative in order for the employee to be entitled to the payments provided herein.

15.4.1 The City will agree to pay tuition and re-certification costs for those employees wishing to maintain their Paramedic Certification, but who do not meet the requirements of Section 15.4. With the exception of occasional Paramedic training conducted by the Department on duty, all training will be on the employee's own time in an off duty status.

The employees utilizing this Section will assist the Department when called upon to perform Paramedic duties without additional compensation.

15.5 Salaries - New Employees

A new employee shall be appointed to the first step of the salary range to which the employee is assigned, provided, however, that a new employee may be appointed at a salary in excess of the first step when it is difficult for the City to locate qualified personnel, or when the education and previous training or experience of a new employee is substantially superior to the minimum qualifications for the classification, or (in exceptional cases) at the discretion of the City Manager.

15.6 Anniversary Date

The employee's anniversary date is the first day of the pay period if employment occurs during

the first fifteen (15) days of the period; otherwise, the anniversary date is the first day of the next pay period.

The anniversary date of an employee on leave without pay shall be extended by the period of the leave.

15.7 Advancement Within Salary Range

Advancement within the salary range for a classification shall not be automatic. All increases shall be based on merit as established by a record of the employee's performance and shall require the written recommendation of the Department Head and approval by the City Manager. An employee who does not receive an in-grade salary advancement shall be notified in writing by the employee's department head as to the reason for denial.

The City Manager may adjust the salary rate of an employee to any step in the employee's existing salary range to correct gross inequities in salary or to reward outstanding achievement and performance.

15.8 Salary after Promotion or Demotion

When an employee is promoted, the employee's compensation shall be set at Step A or one step higher than the employee's current salary whichever is higher, provided, however, the employee's salary shall increase by at least 5%. The employee's new anniversary date shall be the date of the promotion.

Following the successful completion of a formal examination process, should a Paramedic Firefighter elect to accept the position of Firefighter Engineer, the employee's compensation shall be set at the step in the Firefighter Engineer salary range which is closest to their current salary step.

When an employee is demoted to a class with a lower maximum salary, the employee shall be assigned to the applicable salary step in the new class, provided, however, that there shall be at least a 5% decrease in salary assuming that the employee's service has been continuous in the new class. The employee shall retain the employee's previous anniversary date.

15.9 Salary after Transfer

When an employee is transferred from one position to another position in the same class or to another class with the same pay range, the employee shall retain the same step and the same anniversary date.

15.10 Out of Class Pay

15.10.1 After meeting department standards for acting out of class for a position, the

employee shall be compensated for all time worked in that capacity by 5% additional pay at his/her regular straight-time rate of pay for regular time duty, and at time and one-half for overtime duty. Standards for acting assignments shall be as outlined in the Fire Department's Standard Operating Procedures (SOP) Manual in the SOP titled Requirements for Driving & Operating Engines (#518.00 dated 10/99) and Administrative Procedures Acting Captain Assignment (#308.00 dated 2/94). Changes to the SOP's which fall within the scope of representation will be subject to the meet and confer process.

All acting assignments shall be offered on the basis of qualifications for such assignment according to the judgment of the department head or the department head's authorized representative and shall be consistent with Personnel Rules.

15.10.2 Interim Captain: Assignment to the position of Interim Captain is determined by the fact that the Captain will be off (due to injury/illness/extended leave of absence, etc.) for nine (9) consecutive shifts or more or if the amount of time the Captain is to be off is unknown, upon completion of nine (9) shifts or more performing a Captain's duties.

Employees in the Interim Captain assignment, perform the essential job duties of the Captain including, but not limited to, supervising personnel, writing performance evaluations, directing fire suppression and controls operations, supervising and personally participating in rescue and Basic Life Support operations and taking charge of a fire station; supervising and participating in the maintenance of quarters and equipment during an assigned shift.

Employees assigned as Interim Captain shall receive a minimum of 7% additional pay and be assigned to a step in the salary range for Fire Captain which is closest to, but not less than the 7%, for the duration of said assignment. The temporary salary increase will be retroactive to the first shift of the assignment.

The City will maintain in effect a captain's eligible list. All Interim assignments shall be made from those employees on the affected shift whose names appear on the eligible list for the Fire Captain classification.

In the event there is no employee on the affected shift whose name appears on the eligible list, the assignment will be made from those employees who are also on the eligible list but working other shifts. In the event there is no eligible list, the assignment will be made from those employees on the shift who meet the minimum qualifications for the Fire Captain classification followed by those who also meet the minimum qualifications but are working other shifts.

15.11 Pay Period

The payday for each employee shall be the last day of the month or as authorized by the City Council. The City's Finance Department shall provide each employee with a copy of the

employee's time sheet together with the employee's paycheck each payday.

15.12 Terminal Pay

An employee who is terminated is entitled to terminal pay for:

15.12.1 That portion of the final pay period from the first day of the final pay period to the effective date of separation. The day of separation is either the working day specified for the separation or the last day of the pay period if no date is specified;

15.12.2 Accrued vacation actually earned but not taken, subject to the provisions on leave of absence;

15.12.3 Accrued overtime;

In the case of an employee's death, the City shall pay the employee's beneficiary the sums set forth in items 1 through 3 above provided, however, that the employee must have designated a beneficiary on a form specified by the City Manager. If the form specified by the City Manager has not been completed and returned to the finance director, terminal pay shall be paid to the estate of the employee.

Terminal pay shall be paid to an employee only upon submission by the employee of all city-owned property in the employee's possession, including but not limited to, keys, badges and credit cards.

SECTION 16. PARAMEDIC/FIREFIGHTER VOLUNTARY DEMOTION

In the event an employee classified as a Paramedic/Firefighter wishes to relinquish his paramedic designation and voluntarily demote to the classification of Firefighter he/she shall be permitted to do so subject to the following terms and conditions:

16.1 There must be a vacant position in the rank of Firefighter available for him/her to fill.

16.2 A qualified paramedic is available to fill the vacancy created by the demotion.

For purposes of promotion all time served in the rank of Paramedic/Firefighter shall be considered the same as time spent in the rank of Firefighter.

SECTION 17. DEFERRED COMPENSATION

The City agrees that employees represented by the BFA may participate in the City's deferred compensation plan.

The City agrees to request information from ICMA regarding plan expansion that would allow employees to borrow against their own ICMA deferred compensation accounts and discuss such information with BFA no later than 60 days from the adoption of this MOU. The parties agree that any plan document changes to the ICMA deferred compensation program allowing employees to borrow against their own individual account would be done at no cost to the City.

SECTION 18. UNIFORM ALLOWANCE

18.1 The uniform allowance shall be $50.00 per month.

18.2 Effective January 1, 2006, the annual Class A Uniform inspection will no longer be conducted one time each year. All sworn personnel will be required, however, to maintain at least one (1) suitable Class A Uniform to be worn when the employee is officially representing the City as directed by the Fire Chief.

The City agrees to repair or replace uniforms damaged in the line of duty. The Fire Chief or designated representative shall make the determination.

18.3 The City agrees to supply and maintain all linens such as blankets, sheets, pillows, pillowcases, and towels.

18.4 The City agrees to pay up to a maximum of $75 towards replacement of broken watches damaged while on duty.

18.5 Effective January 1, 2006, the City will provide employees with the option to wear rubber or leather (Warrington Pro) turnout boots, which shall be provided by the City.

18.6 Effective January 1, 2006, the City will provide employees with the option to wear station boots provided by the City or an alternate boot approved by the City, matching the standards of City issued boots. Employees opting to wear alternate station boots shall be reimbursed for the purchase of the alternate boots up to the cost of City provided station boots.

SECTION 19. EDUCATIONAL INCENTIVE

19.1 Employees who were employed by the City on June 30, 1989 shall continue to receive educational incentive pay in accordance with the provisions of Section 19.1 of the 1987-1989 Benicia Firefighters' Association Memorandum of Understanding. The City agrees to pay employees represented by the BFA, two and one-half percent (2-1/2%) over their base salary for completion of thirty (30) units of approved college/university courses from an accredited college/university, and seven and one-half percent (7-1/2%) over their base salary for attainment of approved Associates or Bachelors Degree.

Employees who are hired by the City on or after July 1, 1989 shall be compensated in accordance

with the following formula:

19.1.1 Completion of thirty (30) units of approved courses from an accredited college/university: $70.00 per month.

19.1.2 Attainment of an approved Associates or Bachelors Degree from an accredited college/university: $210.00 per month.

19.1.3 Effective July 1, 2006 attainment of an approved Associates Degree from an accredited college/university: $210.00. Attainment of an approved Bachelor's Degree from an accredited college/university: $280.00 per month.

It is understood that an approved major shall be designated by the Fire Chief and City Manager and shall include Fire Science, Public Administration, Business Administration or other such job related course of study.

Employees who obtain an Associates or Bachelors degree may not receive the official documentation for several months. Therefore, employees who complete a degree shall notify the Personnel Department in writing within ten (10) working days of their completion of the required courses. When the official documentation is provided, the employee shall be compensated from the original date of completion.

19.2 Effective July 1, 2006 the three percent (3%) separate pay for holding the required current and valid Emergency Medical Technician 1-A Certificate will be added to base salary. The City will also reimburse each such employee for certification fees, if any, which may be required once each two (2) years.

The BFA has agreed that all employees are required to obtain and to maintain a currently effective EMT 1-A Certificate as a condition of continued employment. In the event an employee fails the EMT 1-A re-certification examination, the employee shall be offered the opportunity to retake the examination at the first available opportunity before any action is taken by the City to terminate the employee's employment. An employee will be afforded only one (1) opportunity to retake the re-certification examination.

19.3 The City and the BFA have agreed to a program whereby Paramedic employees who volunteer to do so may be utilized to conduct in-house EMT 1-A training for employees. Paramedic personnel providing such training shall be properly credentialed and/or certified instructors. The City reserves the right to approve the training program developed by Paramedic instructors for this purpose. The program and instructors shall be approved by the County of Solano and/or the State of California.

SECTION 20. <u>ADDITIONAL DUTY PAY</u>

20.1 Effective July 1, 1995 the base salary of Fire Captain was increased by $75.00 as

compensation for performing a major program assignment. Major program assignments include but are not limited to the following: Volunteer Administrator, Training Officer, Hazardous Material Coordinator, Vehicle Maintenance Officer, Equipment and Safety Gear Officer, and Communications Officer. Each major program assignment will be outlined in the Standard Operating Procedures (SOP) Manual. Said increase is reflected in the salary ranges listed in Attachment B.

20.2 The City and BFA agree that a new full-time, regular classification of Fire Captain/Admin be created. The Administrative Captain shall be responsible for coordination of Emergency Medical Services, disaster preparedness, and perform other duties as assigned. The Administrative Captain shall be assigned to a forty (40) hour workweek. Salary for the Administrative Captain shall be as provided under Section 15.1 of this agreement. Vacation accrual rates, holidays, and Out of Class Pay shall be pursuant to those outlined in a side-letter dated July 1, 1991 for Fire Prevention Specialist. The incumbent assigned EMS Coordinator duties was reclassified to Administrative Captain effective July 1, 1992. Employees holding the permanent rank of Fire Captain shall not be automatically transferred into the Administrative Fire Captain position, should it become vacant.

20.3 Personnel in the Paramedic Firefighter classification who are properly certified and assigned to act as preceptors for new personnel shall receive a 5% differential in compensation during the time that are acting in that capacity.

SECTION 21. HOURS OF WORK

21.1 Application

This section is intended to define the normal hours of work per day or per week in effect at the time of execution of this agreement. Nothing contained herein shall be construed as preventing the City from restructuring the normal workday or workweek for the purpose of promoting the efficiency of municipal government; from establishing the work schedules of employees; and establishing part-time positions.

21.2 Shift Schedule

Suppression Personnel: All employees shall be scheduled to work on a regular shift, and each shift shall have a regular starting and quitting time.

Employees whose workday extends from one calendar day into another, or who work overtime from one calendar day into another, shall be considered as working on the calendar day on which they started the work.

The workweek is established under the FLSA 7(k) work period, and shall consist of fifty-six (56) hours when averaged over a twenty-seven (27) day period on a schedule commonly known as a 3-4 plan. Each twenty-four (24) hour workday shall be considered as one (1) tour of duty.

The twenty-four (24) hour workday shall be interrupted by two (2) uninterrupted one (1) hour meal periods provided an emergency situation doesn't exist which would automatically preclude either or both.

The normal workday for full-time employees covered in this agreement shall be as follows:

24 HOUR WORK SCHEDULE

0800-1700 **May include, but is not limited to:**

Vehicle checkouts	Hydrant Maintenance
Company inspections	Special projects
Physical training	~~One (1)~~ 90 minutes~~hour lunch period~~*
Required training and/or Captains drills	Incident response
Station cleaning (may be designated on a single day)	Special meetings
	Special training
Public Education	Station Maintenance
Pre-Fire Planning	

1700-0700 ***Stand-by time**

0700-0800 **Arise, clean-up station**

* Scheduled night training shall be limited to two (2) times per month per shift as scheduled by the department.

*The 90 minute workout shall routinely be scheduled between the hours of 3:30 pm to 5:00 pm unless otherwise approved by the Fire Chief of Fire Chief's designee.

All Other Personnel:

Employees not assigned to suppression may be scheduled to work a forty (40) hour week. Employees working a forty (40) hour week schedule may submit a written request to the department head to work a 9/80 or a 4/10 work schedule. The department head may grant or deny the request based upon the existing needs of the department.

21.3 Work Schedule

Work schedules showing the shifts, workdays, and hours to which employees are assigned shall be posted on all department bulletin boards at all times. Should it be necessary, in the interest of efficient operations, to establish daily or weekly work schedules departing from the normal workday or the normal workweek, the City shall give notice of such change to the BFA as far in advance as is possible and reasonably practical. Work schedules shall not be unjustifiably changed.

21.4 Shift Trades

There will be no limit on shift trades, which are hereby defined as trades of twenty-four (24) hours or less and which are used for the purpose of attending educational instruction courses or for responding to unanticipated events requiring the employee's personal attention. It is understood that all shift trades will be approved by the Chief or his designee by no later than the start of the shift in question. Additional advanced notice of the trade is not required. ~~Under exigent circumstances, a~~A shift trade may be approved after the start of the shift provided approval is received by the on call chief officer prior to the start of the trade.

All Shift Trades shall be repaid by the employees involved within nine (9) months of the date of the shift trade. If a shift trade is not repaid within the nine (9) month time period, the Fire Chief shall have the right to schedule the employees in order to have the shift trade repaid. The Association shall be responsible for maintaining records of shift trades and providing the Fire Chief with a biannual report on the status of shift trades.

If the individual employees involved in a shift trade are not of the same rank, the trade shall be permitted as long as the individuals are qualified to perform the duties involved in the requested trade or others on shift are available and are qualified such that minimum staffing requirements for the shift can be maintained. Inter-classification trades shall not result in any additional cost to the City. By accepting an inter-classification trade, trade participants waive any right they might otherwise have to out of class compensation for work performed on the traded shift.

21.5 Staffing

The City and BFA share the same concerns regarding the safety of firefighters which are related to the number of firefighters on duty at a given time. The parties are in agreement that at least three (3) firefighters should be on duty on each engine company. The City shall make every effort to assure that this staffing level is attained, however, the parties recognize that exigent circumstances, may, from time to time, preclude the City from attaining this objective.

21.6 48/96 Work Schedule Pilot

21.6.1 This pilot program shall commence July 1, 2006, after the Union and the Department reach agreement on the elements of the 48/96 schedule, and run for 12 months unless section 21.6.3a is used. During this period, employees who, by nature of the work, are required to work twenty-four (24) hour shifts, shall be required to work a schedule, on average, of not more than fifty-six (56) hours per workweek. This schedule shall consist of forty eight (48) hours on and ninety-six (96) hours off (XX OOOO XX OOOO XX OOOO). During this pilot program the suppression division may need to modify their work schedule, as identified in Section 21.2.

21.6.2 During the period of the pilot project, the parties shall assess the merits of the new

schedule based upon criteria including, but not limited to:

- Employee productivity
- Fatigue factors
- Employee use of sick leave
- Employees' desire to continue with the work schedule

21.6.3 The parties shall meet, starting in April 2007, to discuss whether or not to continue with the 48/96 schedule or revert to the prior work schedule. If the parties do not agree in writing by June 1, 2007 to continue the 48/96 schedule, employees shall revert to the schedule that was in effect prior to implementation of the pilot 48/96 schedule, effective July 1, 2007.

21.6.4 This pilot may be terminated upon mutual agreement.

21.6.5 Whenever a shift falls on both December 24th and 25th, the shift will change to December 23rd and 25th and the shift that is scheduled to work December 22nd and 23rd will change to December 22nd and 24th.

21.6.6 The maximum number of consecutive hours worked shall not exceed 96 except in case of emergency.

SECTION 22. PROMOTIONS

When, in the City's judgment, there are sufficient, qualified applicants for promotion available within the Benicia Fire Department, the City will schedule a closed promotional examination.

If, however, in the City's judgment, there is an insufficient number of eligible and/or qualified applicants available, the City shall schedule an open promotional examination.

SECTION 23. INSURANCE

23.1 Health and Welfare

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 contributions 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 then current Kaiser Foundation contribution rate, fifty percent (50%) of the difference between the current Kaiser Foundation contribution rate and the then current contribution rate charged by the City's individual practitioner Health Maintenance Organization provider for the class of dependency coverage involved~~.

Effective 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.

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 for employee +1, and $79.49 for employee + family.

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 only. At that time this extra contribution shall expire and the City's contribution for all participants shall be as described above.

The City shall contribute the full premium required by the providers of the dental and vision care plans provided herein for the term of this Memorandum of Understanding.

The City shall allow employees who have dual coverage on their health plan to receive the equivalent amount of the single ~~rate for medical insurance currently paid to Kaiser~~ contribution rate as describe above; this amount is to be added to the employee's paycheck.

23.2 Life Insurance

The City shall pay the entire cost of providing each insurable regular, full-time employee with $30,000 group term life insurance with said policy to include accidental death and dismemberment coverage.

23.3 Retiree Health Care

The City and BFA agree to reopen, in conjunction with other City Employee Organizations,

negotiations on possible implementation of a retiree medical insurance program. One option to be reviewed by the parties will be individual retiree medical accounts through the ICMA Retirement Program.

Any program implementation will be on a cost neutral basis to the City.

23.4 IRS 125 Plan.

The City has an IRS 125 Plan that is available to City Employees. The City agrees to maintain the IRS 125 Plan during the term of the contract in accordance with IRS regulations and as long as the IRS allows for such plan.

SECTION 24. RETIREMENT

The City shall continue in effect its contract with the Public Employees' Retirement System (PERS) for the term of this Memorandum of Understanding.

24.1 Effective January 1, 1986 the City's contract with the Public Employees' Retirement System (PERS) was amended to provide for credit for unused sick leave, as provided for in Government Code Section 20965.

24.2 The City has amended its contract with the Public Employees' Retirement System [PERS] to include the retirement benefit option of 3% @ 50 in accordance with Government Code § 21362.3. This benefit shall become effective the first of the month following the final amendment process and approval by PERS. The City and the BFA understand that this contract amendment would be prospective only from the effective date of the PERS contract amendment.

24.3 The City implemented the Fourth Tier of the 59 Survivor Benefit with CalPERS upon amendment of the PERS contract.

24.4 As soon as administratively possible, the parties agree to amend the City's contract with Public Employees Retirement System (PERS) to implement a second tier retirement benefit option of 3% at 55 and average three year compensation formula in accordance with Government Code Section 21362.3 for new hires hired on or after January 1, 2011 or hired upon effective date of the contract amendment consistent with CalPERS requirement. The employees in the second tier shall pay the entire employee share (9%) of retirement cost.

SECTION 25. GRIEVANCES

25.1 A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding or disciplinary actions.

25.2 Grievances 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.

25.2.1 The grievance shall be presented in writing either by the employee or by an authorized Association representative to the designated supervisor of the employee within ten (10) working days of the occurrence of the event giving rise to the grievance or within ten (10) working days of the day on which the employee had reason to be aware of the occurrence of the event. However, only in cases where extenuating circumstances exist or for extended leave by the Grievant shall grievances be presented or accepted more than one-hundred eighty (180) calendar days past the occurrence of the event. Grievances which are not presented within these time limits shall be deemed waived and abandoned.

25.2.2 The designated supervisor shall have ten (10) working days from date of receipt of grievance in which to 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 Association representative within ten (10) working days to the Fire Chief or to such representative as he/she may designate.

25.2.3 The Fire Chief or a designated representative shall have ten (10) working days from date of receipt of grievance in which to 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 Association representative to the City Manager or to such representative as he/she may designate within ten (10) days.

25.2.4 If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this Memorandum of Understanding, such grievance shall be submitted to an Adjustment Board comprised of two (2) Association representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Association; and two (2) representatives of the City, no more than one (1) of who 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 a least three (3) members of the Board.

25.2.5 If an Adjustment Board is unable to arrive at a majority decision, either the Association or the City may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the Association and the City Manager. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post hearing briefs, if any.

25.2.6 Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

25.3 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 Association and unless such dispute falls within the definition of a grievance as set forth in Subsection 25.1.

25.4 Proposals to add to or change this Memorandum of Understanding or written agreement or agenda supplementary hereto shall not be arbitrable 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 nor 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.

25.5 No grievance involving disciplinary action taken against an employee will be entertained unless it is filed in writing with the City Manager within ten (10) working days of the time at which the affected employee was notified of such action.

25.6 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.

25.7 The provisions of this Section shall not abridge any rights to which an employee may be entitled under the Civil Service Rules and Regulations.

25.7.1 All grievances of employees in the Firefighter Representation Unit represented by the Association shall be processed under this Section. If the Civil Service Rules and Regulations require that a differing option be available to the employee, no action under paragraph 25.2.4 or 25.2.5 above shall be taken unless it is determined that the employee is not availing himself or herself of such option.

25.7.2 No action under paragraph 25.2.4 or 25.2.5 above shall be taken if action on the complaint or grievance has been taken by the Civil Service Commission, or if the complaint or grievance is pending before the Civil Service Commission.

If the aggrieved employee desires the assistance of a steward as provided in steps 1, 2, 3, or 4 of

the grievance procedure, the City shall afford said steward reasonable time off during work hours without loss of compensation or other benefits to investigate and take up said grievance. The grievant and/or the area steward shall obtain the specific approval of the Fire Chief or, in the latter's absence, another authorized Fire Department management official before leaving their duties or work situation or assignment for the purpose of investigating and/or processing a grievance.

~~SECTION 26. RESIDENCY~~

~~All employees hired on or after July 1, 1984 are required, as a condition of their continued employment with the City, to have their place of abode within either fifty (50) air miles or within a sixty (60) minute driving time at the posted speed limit (whichever is greater) of Headquarters Fire Station.~~

~~New employees must establish residency within the limit within one (1) year of successful completion of the probationary period.~~

SECTION 2~~7~~6. PHYSICAL FITNESS PROGRAM

In order to further the City's effort to improve and maintain employees' health and safety when performing the many physically demanding essential duties required of a Firefighter, the City and the Benicia Firefighters' Association agree to the following:

2~~7~~6.1 The Benicia Firefighters' Association agrees to continue the existing mandatory physical fitness program which affords represented members time on duty for the purpose of maintaining and increasing each individual's level of fitness.

2~~7~~6.2 The Benicia Firefighters' Association and the City will continue the existing annual testing of individual fitness.

2~~7~~6.3 The City and BFA will continue to meet and confer on further implementation of a comprehensive Physical Fitness and Performance Testing Program. This meet and confer process is subject to all City impasse procedures.

SECTION 2~~8~~7. MAINTENANCE OF BENEFITS

The parties agree to the continuation of all rights and benefits presently enjoyed, which are not changed by this Memorandum of Understanding.

SECTION 2~~9~~8. CLOSING CLAUSES

2~~9~~8.1 The effective date of this agreement shall be July 1, 20~~05~~10, and the agreement shall remain in effect until June 30, 20~~10~~12. Side letters previously agreed to during the

2005 to 2010 MOU will remain in effect for the term of this MOU unless otherwise agreed to.

2~~9~~8.2 This agreement shall remain in force after its expiration where negotiations between the City and the BFA have not resulted in a new agreement, until such time as a new agreement is reached by both parties.

2~~9~~8.3 Any benefits in this agreement pertaining to work hours, shifts, or personnel assignments, may be suspended temporarily by the City where a declared emergency exists as defined by the Civil Disaster Emergencies Plan. The City shall have sole power to determine the existence of an emergency and whether benefits will be suspended.

2~~9~~8.4 If any section of this agreement 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 agreement shall remain in full force and effect for the duration of this agreement. In the event of invalidation of any section, the City and the BFA agree to meet within thirty (30) days for the purpose of renegotiating said section.

2~~9~~8.5 This Memorandum of Understanding shall be submitted to the City Council for adoption.

28.6 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 other alternatives, including concessions, needed to prevent layoffs of currently funded BFA members.

The City has realized a fiscal gain with respect to having three frozen positions within the Fire Department's Suppression Unit during the last budget cycle. Both parties to this Agreement expect this same fiscal policy to continue through the term of this MOU, to avoid layoffs of current suppression personnel. The BFA recognizes that if this current practice creates a fiscal loss or restricts special outside revenues that the frozen positions could be filled and the filling of the additional three positions does not prohibit triggering the reopener as defined above.

ADDENDUM

HAZARDOUS MATERIALS RESPONSE TEAM

The City intends to participate in the development, training, and staffing of the Solano County Hazardous Materials Response Team. The City intends to maintain and support three (3) Team members at all times.

Hazardous Materials Response Team member participation is considered 'voluntary'. No employee shall be required to participate on the Team, or participate in Hazardous Materials 'Technician' or 'Specialist' training. All hours worked will be compensated in accordance with applicable Memorandum of Understanding sections.

The following factors shall be used by the City to determine current and future appointments of Team members and/or Alternates: (1) Ideally, one (1) Team Member per shift, but not required, (2) Past job performance, (3) Expressed interest in training, (4) Recommendation of company officer, (5) Positive attitude, (6) Prior Hazardous Materials experience, (7) Seniority will be used as a factor when all other factors are equal. Employee rank (firefighter, firefighter/paramedic, engineer, captain) shall not be used as criteria for selection. No Team or Alternate applicant shall be evaluated with respect to his/her residential location to the City of Benicia. Applicants for Team or Alternate positions shall receive, from the Fire Chief or his/her designee, written notification of appointment to either position within 30 days of completing an interview. Additionally, a written explanation to applicants who are not appointed as Team members or Alternates will be sent to each applicant that outlines areas of improvement that would increase the employee's chances of future appointment. There will be no retaliation against a Team Member or Alternate who resigns from the Program.

The City authorizes training of employees to the minimum qualifications to be a Team Member and will support any necessary training for approved Benicia Fire Department Team Members to maintain this level of certification. Training support of Alternate Members will be limited to minimum requirements to maintain Hazardous Materials Team Certification but will not include the on going drills. Team Alternates shall be utilized first to fill Team positions that become vacant.

The City will announce future Team or Alternate vacancies to all Benicia Fire Department personnel covered under the current Memorandum of Understanding 30 days prior to appointing new Team Members or Alternates. The City agrees to announce vacancies, appoint candidates, and provide Hazardous Materials Team training to qualified employees when vacancies on the Team occur, and Alternates are exhausted. It is understood that the City is not obligated to maintain an 'Alternates List' beyond the scope of the Team's initial training.

The City will pay any and all costs associated with the Team Members' initial and on-going training, and utilization by the Team during call back. Hazardous Materials Response Team

Members, upon initial completion of Hazardous Materials training and upon the date the Solano County Hazardous Materials Team becomes functional (i.e. able and available to respond to incidents), shall receive 5% additional compensation on base pay. This rate shall be paid each pay period irrespective of whether or not there was an actual Hazardous Materials call back. The Team Members will also serve as Hazardous Materials Coordinators for the Department, as assigned, to provide extra hazardous materials related services such as hazardous materials training (limited to their own scope of training), equipment/supplies evaluation and recommendation, Hazardous Materials incident assistance, response planning and procedures development, etc.

The City maintains the right to terminate or change the scope of its participation in the Solano County Hazardous Materials Response Team at any time. In the event termination occurs, the 5% compensation for Team Members will end upon 30 days notice by the City.

Dated:

BENICIA FIREFIGHTERS ASSOCIATION

Todd Matthews

President

~~Jeff Davidson~~ Jason Fein

Vice President

~~Jason Fein~~ Jeff Davidson

Greg Petersen

~~Jared Matcham~~Jeff Toynbee

~~Stephen J. Booth~~Ken Akins, Representative
University Research and Associates

CITY OF BENICIA

~~James R. Erickson~~ Brad Kilger

City Manager

~~Diane O'Connell~~Anne Cardwell,

~~Human Resources~~Administrative Services Director

Dania Torres Wong, RSHS, Representative

Heather McLaughlin
City Attorney

ATTACHMENT A

TEMPORARY LIGHT DUTY

I. OBJECTIVE

The Light Duty Program is designed to restore to productive status as soon as possible, employees who are recovering from an injury or illness until such time as possible they can resume the full work requirements of their position.

II. PURPOSE

To provide, where appropriate, for the return to work as soon as possible of both industrially and non-industrially injured and/or ill employees.

To provide a safe and cost effective system of utilizing personnel resources.

To limit and control the nature of duties assigned to personnel with known physical limitations so that productive assignments can be performed by the employee without fear of aggravating the disability.

To maintain an orderly procedure for monitoring employees on light duty assignments. Employees entitlement or denial to benefits under this program shall be in compliance with California Workers' Compensation Law where applicable.

III. SCOPE

1. Non-Industrial Injury or Illness

An employee on non-industrial sick leave will not be required by the City to return to work in a light duty capacity prior to his being released by his/her physician for the performance of duties. However, the City will entertain requests from employees suffering from non-industrial related injuries or illnesses who have been off work for at least ten (10) shifts, to return to light duty in the event that they wish to avoid exhausting all of their sick leave or in those cases where all remaining sick leave has been used. The Fire Chief may waive the requirement of a ten (10) shift waiting period when warranted in his discretion. In any case, the employee must provide a written Doctor's release authorizing light duty work.

Employees that have received medical clearance to return to work on “light/modified duty” may take up to seven calendar days from the date they are cleared to return to work to make arrangements to return to work provided those days are taken as vacation or comp time and

unpaid if no vacation or comp time leave balances exists.

2. Industrial Injury or Illness

An employee disabled as the result of an industrial injury or illness may be required by the City as a condition of continued employment to return to work in a light duty status if his/her physician releases the employee for the performance of light duty work. Such employees released for light duty work shall provide the Personnel Officer with a written light duty release from the doctor promptly upon receiving same. Such light duty assignment shall continue until the physician releases the employee for full duty.

The City reserves the right to exercise its prerogative to protect itself against excessive future liability and insurance risk, and the employee against further aggravation and/or injury. Therefore, light duty assignments will be evaluated and assigned on a case-by-case basis.

IV. PROCEDURE

1. Upon receiving notice of the release of a temporarily disabled employee for light duty work, a determination will be made by the Personnel Officer on the appropriateness of assigning light duty to the injured employee. Such determination shall take into account the opinion and recommendation of the disabled employees treating physician or health care provider. The employee must provide the physician's (or other health care providers) medical release form specifying all work limitations.

2. If the above determination results in a finding that the employee is able to return to a light duty assignment, the Personnel Officer will consult in advance with the Department Head about the availability of a light duty assignment for the employee.

3. If it is determined that the employee can be temporarily assigned to light duty (within the division of original assignment), the employee will be returned to light duty work.

4. Particular duty assignments will be based on the department needs and priorities, individual capabilities, physical limitations and estimated duration of illness/injury.

5. If light duty is not available within the Fire Department an appropriate substitute shall be sought by the Personnel Officer. If such a substitute is available, the employee shall be returned to work in such substitute position.

Work requirements, including the number of hours worked and/or shifts and classifications, may be varied to meet the objectives of this program; provided, however, that such schedules shall not exceed the standard straight-time hourly work week.

6. If no light duty work is available within the limitations set by the physician, the employee will

remain on a "no work" status and continue to receive those benefits for which they are eligible.

Light duty assignments may continue until such time as the disabled employee is given a full and complete medical release to resume normal work activities.

Employees that have received medical clearance to return to work on “light/modified duty” may take up to seven calendar days from the date they are cleared to return to work to make arrangements to return to work provided those days are taken as vacation or comp time and unpaid if no vacation or comp time leave balances exists.

V. COMPENSATION

When performing light duty work assignments in accordance with this section, employee shall receive their normal salary and benefits for their regular classification of employment.

Employees assigned to light duty work assignments shall not be required to perform the duties of a higher paid classification.

At such time as an industrially injured employee is assigned to light duty pursuant to the provisions of this policy, the employee will no longer be entitled to Section 4850, temporary disability benefits.

ATTACHMENT B

-	AS OF	AS OF	AS OF	AS OF	AS OF
Date	7/1/2005	7/1/2005	7/1/2005	7/1/2005	7/1/2005
Step	A	B	C	D	E
-	-	-	-	-	-
TITLE	-	-	-	-	-
-	-	-	-	-	-
Fire Captain	5,831	6,123	6,428	6,750	7,087
Fire Captain/Administration	6,123	6,429	6,750	7,087	7,442
Firefighter	4,819	5,060	5,313	5,579	5,858
Firefighter/Engineer	5,301	5,566	5,844	6,136	6,443
Paramedic/Firefighter	5,301	5,566	5,844	6,136	6,443
-	-	-	-	-	-
-	AS OF	AS OF	AS OF	AS OF	AS OF
Date	1/1/2006	1/1/2006	1/1/2006	1/1/2006	1/1/2006
Step	A	B	C	D	E
-	-	-	-	-	-
TITLE	-	-	-	-	-
-	-	-	-	-	-
Fire Captain	6,235	6,547	6,874	7,217	7,578
Fire Captain/Administration	6,547	6,874	7,218	7,578	7,957
Firefighter	5,153	5,411	5,681	5,966	6,264
Firefighter/Engineer	5,668	5,952	6,249	6,561	6,889
Paramedic/Firefighter	5,668	5,952	6,249	6,561	6,889
-	-	-	-	-	-
-	AS OF	AS OF	AS OF	AS OF	AS OF
Date	**7/1/2006***	**7/1/2006***	**7/1/2006***	**7/1/2006***	**7/1/2006***
Step	A	B	C	D	E
-	-	-	-	-	-
TITLE	-	-	-	-	-
-	-	-	-	-	-
Fire Captain	6,549	6,877	7,221	7,582	7,961
Fire Captain/Administration	6,878	7,222	7,583	7,962	8,360
Firefighter	5,414	5,685	5,969	6,268	6,581
Firefighter/Engineer	5,954	6,252	6,565	6,893	7,238
Paramedic/Firefighter	5,954	6,252	6,565	6,893	7,238
-	-	-	-	-	-
-	AS OF	AS OF	AS OF	AS OF	AS OF
Date	**1/1/2007***	**1/1/2007***	**1/1/2007***	**1/1/2007***	**1/1/2007***
Step	A	B	C	D	E
-	-	-	-	-	-
TITLE	-	-	-	-	-
-	-	-	-	-	-
Fire Captain	6,680	7,014	7,365	7,733	8,120
Fire Captain/Administration	7,015	7,366	7,734	8,121	8,527

~~Firefighter~~	~~5,522~~	~~5,799~~	~~6,089~~	~~6,393~~	~~6,713~~
~~Firefighter/Engineer~~	~~6,074~~	~~6,378~~	~~6,697~~	~~7,031~~	~~7,383~~
~~Paramedic/Firefighter~~	~~6,074~~	~~6,378~~	~~6,697~~	~~7,031~~	~~7,383~~
Date Step TITLE	AS OF 1/1/09 A	AS OF 1/1/09 B	AS OF 1/1/09 C	AS OF 1/1/09 D	AS OF 1/1/09 E
Fire Captain	7292	7657	8040	8442	8864
Firefighter	6027	6328	6644	6977	7325
Firefighter/Engineer	6629	6961	7309	7674	8058
Paramedic/Firefighter	6629	6961	7309	7674	8058

~~*** 3% EMT pay included in base salary**~~
~~Beginning 7/1/2008, the remaining years of this Contract are subject to Market Survey.~~

AGENDA ITEM
CITY COUNCIL MEETING DATE - DECEMBER 16, 2010
CONSENT CALENDAR

DATE : December 10, 2010

TO : City Council

FROM : Administrative Services Director

SUBJECT : **APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH BENICIA POLICE OFFICERS ASSOCIATION (BPOA)**

RECOMMENDATION:
Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with BENICIA POLICE OFFICERS ASSOCIATION (BPOA).

EXECUTIVE SUMMARY:
The City concluded negotiations with the BPOA on December 8, 2010 and the group voted to ratify the tentative agreement on December 13, 2010. The BPOA consists of 31 incumbents and is comprised of the Department's police officers and sergeants.
This agreement provides for:

- No salary increases during the term and an ongoing reduction amount equal to a 3.16% salary reduction. This salary reduction will occur as an employee deduction from salary to be applied toward the cost of medical insurance. Additionally, elimination of the sick leave incentive and the City contribution to Vantage Care for 2010-11 will be made to make up the salary savings that would have occurred in July-November, 2010.
- Sets a fixed dollar contribution for the City for employee medical insurance that will help control future City cost increases in benefits.
- Agrees to a new lower retirement tier for new hires that will help control future City cost increases in benefits.

BUDGET:
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 – Clean Copy
- Agreement – Proposed Language

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Section 1. Preamble

This Agreement is entered into by the City of Benicia, hereinafter referred to as the "City" and the Benicia Police Officers Association, hereinafter referred to as "BPOA," for the purpose of promoting harmonious relations between the City and the BPOA, to establish an orderly and peaceful procedure to settle differences which might arise and to set for 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.

Section 2. Recognition

The BPOA is hereby recognized by the City as the bargaining agent for the Police Officers, Police Sergeants, and for employees properly included in the said Bargaining Unit, under the conditions of the State law.

Section 3. Non-Discrimination

The City shall not discriminate against any employee covered by this agreement because of membership or non-membership in the BPOA or authorized activity as required in this agreement on behalf of the members of the BPOA. The BPOA shall not discriminate against any employee covered by this agreement because of membership or non-membership in the BPOA. Neither party shall 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.

Section 4. Employee Rights

Employees shall have the right to fair and equal treatment in all aspects of employment conditions. Neither management nor its representatives shall exercise their rights and authority in relationship to conditions of employment in a capricious, arbitrary, or unreasonable manner. Any punitive personnel action taken which will result in any loss of pay or benefits shall be taken in a manner consistent with Civil Service Rules and Regulations and laws of the State. An employee's salary shall not be directly deposited in the bank by the City without the employee's consent.

Section 5. Union Business

5.1 The City agrees to provide space on bulletin boards to the BPOA for the announcement of meetings, election of officers of the BPOA and any other material related to the BPOA business. Furthermore, the BPOA shall not post material detrimental to the labor-management relationship nor of a political or controversial nature.

5.2 No BPOA member or representative shall solicit members, engage in organizational work, or participate in other BPOA activities during working hours on the City's premises except as provided for in the processing of grievances, or during periods of negotiations to update the membership on the progress of said negotiations.

5.3 BPOA members or representatives may be permitted to use suitable facilities on the City's premises to conduct BPOA business during non-work hours upon obtaining permission from the City's Personnel Officer or his/her designated representative. Any additional costs involved in such use must be paid by the BPOA.

5.4 BPOA representatives shall be permitted to investigate and discuss grievances during working hours on the City's premises if notification is given to the Personnel Officer or his/her designated representative. If the BPOA representative is an employee of the City, he/she shall request from his/her immediate supervisor, reasonable time off from his/her regular duties to process such grievances. The City will provide a reasonable number of employees with time off, if required, to attend negotiating meetings.

Section 6. Shift Schedule

In consideration for the fact that employees may have to work through their meal period, each shift incorporates a thirty (30) minute paid meal period.

6.1 Twelve (12) hour Shift Schedule and Ten and one-half hour (10.5) Traffic Schedule:

The City shall designate a 7K exemption twenty-eight (28) day work period pursuant to the Fair Labor Standards Act.

"Patrol Pay" and "Traffic Pay." Although employees who work 12-hour or

10.5-hour schedules shall work and earn overtime pursuant to a 28-day FLSA work period, they shall continue to receive a monthly salary and be paid on a monthly basis. In recognition of the fact that a 12-hour per day or 10.5-hour per day employee will be regularly scheduled to work a greater number of hours per year than a 10-hour per day employee, 12-hour per day and 10.5-hour per day employees will be paid, in monthly payments, for an additional 104 hours per year, calculated as follows:

> Monthly Salary Schedule Amount + (if applicable: Monthly Education Pay, Canine Pay and/or Corporal Pay) x 12 months x 104 hours / 2080 hours.

Employees will be paid a straight time rate for the first three (3) hours of required training during each of the thirteen (13) twenty-eight (28) day work periods. If the three (3) hours are not used, the obligation is negated for that work period. The department will give employees a minimum of seventy-two (72) hours notice prior to scheduling training identified in this section.

Sick Leave and Annual Leave accrual rates remain as currently calculated (i.e., sick leave will accrue at eight (8) hours but will be taken in twelve (12) hour increments for employees assigned to patrol and ten and one-half (10.5) hour increments for employees assigned to traffic.

<u>Shift Schedule for Employees assigned to patrol:</u>

1. Shifts will have the same fourteen (14) day rotation schedules. (See Attachment 1)

2. Bidding will take place one time each year for two (2) six (6) month periods (December 1 and June 1 rotation dates). Employees may stay on the same watch for two (2) consecutive six (6) months periods and then must bid for the opposite watch (i.e., days to nights).

   In order to provide more flexibility, an employee may bid for any shift/watch as long as it does not conflict with the above paragraph and the employee does not bid for a shift/watch which would require a double-back at shift change.

Bidding for watch/squad schedules will be by seniority.

An Acting Supervisor/Field Training Officer (Corporal) shall be assigned

to each watch/squad.

No double shifts will be allowed for safety purposes.

The Chief of Police may, at his/her discretion, revoke the Twelve-hour shift schedule in order to provide adequate patrol shift coverage. Prior to revoking the 12-hour shift schedule, unless in the event of an emergency, the Chief of Police will provide the POA with thirty (30) days notice and the POA will have an opportunity to meet with the Chief of Police on the impact of the change.

6.2 Ten (10) Hour Shift Schedule:

Employees assigned to Investigations and Administration Divisions will work a 4/10 Plan.

6.3 Special Assignments:

If a special assignment is posted and no qualified candidates volunteer the Chief of Police will select an employee to fill the position that best meets the needs of the department. This selection will not be deemed punitive even though it may result in a lower net salary (reduction of 104 hours).

Section 7. Overtime Work, Recall

7.1 Overtime Work

A. All work performed in excess of an employee's normal work day or in excess of an employee's normal workweek shall be considered overtime work. The parties agree that assignments of overtime work shall rest solely with the Chief of Police or designated representative, taking seniority into consideration whenever possible. The parties agree that the assignment of overtime work is on an involuntary basis and any employee refusing assignment of such work is subject to disciplinary action deemed appropriate by the Chief of Police.

B. 12-Hour Shifts/10.5-Hour Shifts: Employees working 12-hour shifts or 10.5-hour shifts are entitled to overtime for hours worked in excess of twelve (12) in a day for employees assigned to patrol, or in

excess of ten and one-half (10.5) in a day for employees assigned to traffic, or in excess of 168 in the 28-day FLSA work period, if required training has not been scheduled. If required training has been scheduled, these employee are entitled to overtime for hours worked in excess of 171 in the 28-day FLSA work period and shall receive straight time for the 169th, 170th, and 171st hours worked, unless otherwise specified in this MOU. The overtime rate for all overtime paid these employees shall be calculated as follows:

Base Pay (salary schedule amount) for 28-day Work Period + Applicable Incentives Earned During 28-Day Work Period x 1.5 / 168 hours.

C. 10 Hour Shifts: Currently, employees working in "investigation" and "administration" work a 4/10 schedule. These employees are entitled to overtime for hours worked in excess of ten (10) in a day or forty (40) in a workweek. The overtime rate for these employees shall be calculated as follows:

Base Pay for Workweek + Applicable Incentives Earned During that Work Week x 1.5 / 40 hours

D. All paid leave will be counted as hours worked for overtime purposes.

E. "Applicable Incentives" for FLSA overtime shall include education pay, acting pay, standby pay, FTO pay, holiday pay and canine officer pay, patrol pay, Corporal pay, and shift differential.

7.2 Compensation for Overtime Work

All overtime work must be approved in advance by the Chief of Police or their designated representative; provided, however, that when emergency conditions exist, the Chief of Police may approve exceptions to the procedure.

Any authorized time worked in excess of the employee's normal work day shall be compensated at the rate of one and one-half (1 & 1/2) times the employee's regular straight-time rate of pay. Compensatory time off may be taken in lieu of overtime payment. Such time off shall be mutually agreeable to the employee and the Chief of Police or his/her designated representative. Compensatory time off which accrues in excess of forty

(40) hours must be liquidated by monetary payment.

7.3 Call Out

If an employee is called to work at a time other than his/her scheduled work shift, he/she shall be credited with a minimum of four (4) hours at one and one-half times his/her straight-time hourly rate; provided, however, that this provision shall not apply if the employee is called to work immediately preceding his/her scheduled work shift or is held over for work immediately following the scheduled work shift.

7.4 On Call Time

Detectives and/or any employees assigned to standby status shall be compensated at the rate of eight (8) hours of straight-time pay for each week the Detective or any employee is assigned to standby. In the event an employee on standby is called out to work, he/she shall receive a minimum of three (3) hours pay at the rate of time and one-half (1&1/2). If the employee is called out more than once during a single three (3) hour period, only (1) Call Out shall be authorized.

7.5 Daylight Savings Time

On any weekend during which there is a change to or from Standard Time to Daylight Savings time, the Chief of Police may adjust work schedules so that those assigned to work do actually work the regular number of hours normally assigned to the shift.

The "time change hour" for Daylight Savings shall not be included in the definition of actual hours worked or be considered for pay purposes, and no employee assigned to a shift who works during the transition to or from Standard Time to Daylight Savings Time shall be paid any sum except for actual hours worked during said shift.

Section 8. Agency Shop

8.1 Agency Shop: As a condition of continuing employment, employees shall become and remain members of the Association or shall pay to the Association a service fee in lieu thereof. Such service fee shall be established by the Association and shall not exceed that portion of the

Association's dues and initiation fees (herein after collectively termed "service fee") paid by members of the Association as are expended by the Association in fulfilling its responsibilities for representing members of the Representation Unit in the negotiation and administration of the Memorandum of Understanding. Initiation fees shall only apply to employees hired after implementation of this agreement. The Association shall comply with the rules governing the establishment of agency shop fees as set forth in the U.S. Supreme Court's decision in March, 1986 in Chicago Teachers Association v. Hudson.

8.2 Implementation: Not later than thirty (30) days after approval of this Agency Shop Agreement, the City shall deliver to each employee subject to this Memorandum of Understanding who is not also a member of the Association a notice advising that the City has entered into an Agency Shop Agreement with the Association and that all employees subject to the Memorandum of Understanding must either join the Association, pay a service fee to the Association, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Association dues or a service fee, or a charitable contribution equal to the service fee.

8.3 Payroll Deductions: The City shall deduct Association dues or service fees and premiums for approved insurance programs from the employee's pay in conformity with State and City regulations. The City shall promptly pay over to the designated payee all sums so deducted. The City shall also periodically provide the Association with a list of all persons making charitable deductions pursuant to the religious exemption granted herein.

8.4 Hold Harmless: The BPOA shall indemnify, defend, and save harmless the City of Benicia, its officers, employees and agents acting on its behalf from and against any and all losses, damages, costs, expenses, claims, demands, actions, suits, judgments and other forms of liability arising out of the application or enforcement of this Section. In no event shall the City be required to pay from its own funds Association dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

8.5 Election: The election to implement the provisions of this agreement shall not prohibit or restrict an election to rescind this Section as provided for by Section 3502.5 of the Government Code.

Section 9. No Strike - No Lockout

9.1 The BPOA agrees that participation in a strike shall subject an employee to disciplinary action, up to and including discharge.

9.2 The BPOA, its representatives, or members, shall not engage or cause, instigate, encourage, sanction, or condone a strike of any kind. No employee shall refuse to cross any picket line in the conduct of official City business, nor shall the BPOA, its representatives, or members, discriminate in any way toward anyone who refuses to participate in a strike. Strike means the concerted failure to perform or report to duty for the purpose of inducing, influencing, or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

9.3 The City shall not institute, authorize, cause, aid, ratify, or condone any action to provoke interruption of or prevent the continuity of work normally and usually performed by employees for the purpose of coercing the employees into relinquishing rights guaranteed under the law. The City shall not, during the terms of this Memorandum, engage in any lockout of employees represented by the BPOA.

Section 10. Management Rights

The employee organization, BPOA, agrees that the City retains all its remaining rights and authority under law and expressly and exclusively retains its management rights not affected by this Agreement which include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons; maintain the efficiency of government operations; determine the methods, means and number and 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 subcontract any work 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 the technology of performing its work. Management rights shall be exercised in a manner consistent with applicable laws and the Rules and Regulations of the Benicia Civil Service Commission.

Throughout this MOU the phrase "Chief of Police" is referenced. The Chief of Police retains the right to delegate their authority for a particular section to another designee, based on operational needs.

Section 11. Vacation Leave and Annual Personal Leave

11.1 Vacation Leave - Accrual

For the purpose of this section a work day equals eight (8) hours. The authorized annual vacation leave granted employees after 6 months of continuous City service shall be as follows:

(1) From one (1) through three (3) years of continuous service - ten (10) work days.

(2) From four (4) through nine (9) years of continuous service - fifteen (15) work days.

(3) From ten (10) through nineteen (19) years of continuous service - twenty (20) work days.

(4) For twenty (20) years or more of continuous service - twenty-five (25) work days.

In order to recruit qualified police officer candidates, the Police Chief may approve a new lateral police officer to begin accruing at a higher vacation level commensurate with their years of lateral experience. This level will

be negotiated between the Police Chief and the employee. The employee's years of experience will follow them forward for the purpose of calculating when they are eligible to move to the next vacation accrual level. This section applies to employees hired after January 1, 2005 only where a specific agreement has been made between the Police Chief and the employee at time of employment. This section will not be applied to any other employee retroactively. Total years of service in law enforcement will only be recognized for the purposes of accruing vacation and will not be used to calculate any other benefits (such as seniority, longevity, etc.).

11.2 Earning Vacation Leave

Full vacation leave as set forth in Section 11.1 shall be earned by:

(1) An employee on sick leave with pay.

(2) By a Safety Member while on a leave of absence covered by California Labor Code Section 4850.

(3) An employee on jury leave.

Vacation leave as set forth in Section 11.1 shall not be earned by:

(1) An employee on an unpaid leave of absence.

11.3 Scheduling Vacation Leave

Vacation selection will be by seniority on the watch/squad to which the employee is scheduled during the time of the vacation leave. The employees will make vacation selections after the October watch/squad selection. Only one Officer and one Sergeant from each watch/squad will be allowed to take their scheduled annual vacation at the same time, and only one patrol Sergeant may be on scheduled annual vacation at any given time. The patrol Lieutenant may authorize more than one patrol Sergeant to be off on vacation leave for short periods and individual days depending upon staffing levels.

The scheduling of vacation leave shall be determined by the Chief of Police based on the wishes of the employee and with particular regard for the needs of the City.

Employees are encouraged to take vacation leave in increments of one (1)

week at a time.

11.4 Sick Leave During Vacation Leave

An employee may change vacation leave to sick leave upon submission of a doctor's certificate that the employee is ill and unable to work.

11.5 Annual Personal Leave Allowance

Employees covered by this Agreement will earn 8 hours of personal leave per fiscal year. The employee may use such leave for any purpose subject to advance approval of his/her
absence. The Personal Leave Day must be used and cannot be carried over from one fiscal year to the next.

11.6 Vacation Accrual Limits

Employees covered by this Agreement may exceed vacation accrual limits during a calendar year, however, the accrual limit ceiling of 360 hours will be imposed on December 31st of each year.

11.7 12-Hour Shift

Employees working a twelve (12) hour shift will have twelve (12) hours subtracted from their leave balance for each day of vacation taken.

11.8 10-Hour Shift

Employees working a ten (10) hour shift will have ten (10) hours subtracted from their leave balance for each day of vacation taken.

11.9 10.5-Hour Shift

Employees working a ten and one-half (10.5) hour shift will have ten and one-half (10.5) hours subtracted from their leave balance for each day of vacation leave taken.

Section 12. Leave of Absence

12.1 Definition

A leave of absence is a privilege which may be granted to an employee wishing to leave the City service without pay and in good standing for a limited period of time.

12.2 Procedure

(1) A request for a leave of absence without pay must be made to the Chief of Police in writing by the employee stating the dates of leave of absence requested and the reason for the request.

(2) The Chief of Police 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.

(3) An employee shall be entitled to payment for any earned vacation and accumulated overtime at the beginning of an approved leave of absence.

12.3 Unauthorized Leave of Absence

The failure of an employee to return to duty upon the termination of an authorized leave of absence is an unauthorized leave of absence.

An unauthorized leave of absence is grounds for disciplinary action, including dismissal, unless upon the employee's return, the employee furnishes reasons satisfactory to the Chief of Police and the City Manager for not having obtained an authorized leave of absence. The unauthorized leave of absence shall be treated as time not worked. The City shall deduct from the employee's pay, an amount equal to time absent from City service.

12.4 Jury Leave

When an employee is summoned for jury duty, the employee shall be

granted a leave for jury duty, upon presentation of the summons to the Chief of Police.

An employee shall receive full pay while on leave for jury duty; provided, however, the employee must remit compensation received for jury duty, except compensation for mileage. An employee who elects to retain compensation received for jury duty shall not receive salary while on jury duty.

When an employee is released from jury duty, the employee shall report for duty on his next regularly scheduled day unless called to duty to fill a short shift or under emergency conditions.

12.5 Bereavement Leave

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

(1) The Chief of Police may allow an employee a leave of absence up to three (3) days to attend the funeral of a member of the employee's immediate family.

(2) Up to an additional two (2) days may be granted for out-of state funerals.

(3) The Chief of Police may allow an employee leave of absence up to one day 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. Additional time may be charged to compensatory time or vacation leave.

(4) 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 member of the employee's household.

12.6 Military Leave

Military Leave shall be granted in accordance with the provisions of state and federal law. An employee taking military leave shall give the Chief of Police a copy of the employee's orders to report to military duty.

12.7 Maternity/Paternity Leave

A pregnant employee shall be entitled to a maternity leave of absence in accordance with State and federal laws. Employees shall be entitled to paternity leave in accordance with State and Federal laws.

Section 13. Sick Leave

13.1 Eligibility and Accrual

(1) Employees shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. For the purpose of this section one (1) day equals eight (8) hours. Employees shall earn sick leave at the rate of one (1) day for each calendar month of service. Full sick leave is earned by each full-time employee while on paid leave of absence, including sick leave and jury leave. Safety members shall accrue full sick leave while on paid disability accident leave. Sick leave shall not be earned by employees on unpaid leave of absence.

(2) In order to recruit qualified police officer candidates, the Police Chief may approve a new lateral officer to begin their employment with the City of Benicia with up to ninety-six (96) hours of sick leave available for use during their first year of employment. The employee will accrue the standard eight (8) hours per month, but would be able to use additional leave that they have not yet accrued, up to the maximum of 96 hours. Should the employee be terminated or leave the City prior to completion of one year of employment, any sick leave used and not accrued will be reimbursed to the City, as the City does not pay out the cash value of sick leave upon separation. This section applies only to employees hired after August 1, 2007, and only where a specific agreement has been made between the Police Chief and the employee at time of employment. This section will not be applied to any other employee retroactively.

13.2 Usage of Sick Leave

(1) Permissible Usage of Sick Leave. Sick Leave is provided to continue the salary of an eligible employee who is absent from work because of an illness.

(a) Employee Illness / Medical Appointment: With the prior approval of the Chief of Police an employee may use accumulated sick leave for medical or dental appointments. Sick leave granted in accordance with the provisions in this sub section shall be so documented on the employee's time sheet and in the employee's personnel records.

(b) Family Member Illness / Medical Appointment: Family Care (Labor Code Section 233). Employees may use one half of their annual accrual worth of sick leave to care for an ill family member. Under this section, family member includes Child, Parent, Spouse, and Domestic Partner. Mothers-in-law, fathers-in-law, and grandparents are not considered "parents" for purposes of this law. The illness does not have to be serious in nature and includes doctors appointments. These days may not be carried over from year to year. Conditions and restrictions contained in this Memorandum of Understanding for an employee's use of sick leave also apply to sick leave used under this section.

Any employee on authorized leave under Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), or other federal or state law shall be governed by the provisions of said regulations.

(2) Non-permissible Usage of Sick Leave. Unless otherwise permitted by law, no employee shall be entitled to use sick leave with pay while absent from duty under any of the following conditions:

(a) Disability arising from sickness or injury purposely self-inflicted or caused by employee's willful misconduct;

(b) Disability arising from sickness or injury sustained while on unpaid leave of absence;

(c) Disability arising from sickness or injury related to compensated employment other than with the City;

(d) Disability arising from sickness or injury while receiving compensation from the City for an industrial accident pursuant to Section 13.1.

(e) For absence caused by intoxication or excessive use of alcoholic beverages.

13.3 Accumulation

Accumulation of sick leave by all employees shall be unlimited.

13.4 Notification

To receive sick leave, an employee must notify the department at least one (1) hour prior to the commencement of the employee's scheduled shift. The Police Chief, at their discretion, may waive the one (1) hour requirement based on circumstances.

13.5 Sick Leave Conversion

The City agrees to convert 25% of accrued sick leave upon retirement (service or disability) to cash, payable to the retiring employee, provided he/she has at least twelve (12) years service. In no case shall such payment exceed one months' salary for the incumbent position in effect at the time of retirement.

For purposes of this section salary includes Salary Schedule Amount + Education Pay.

13.6 Return to Employment Following Sick Leave

When an employee returns to duty following an absence chargeable to

sick leave, the Chief of Police or the City's personnel officer may require an affidavit stating the duration of the illness/injury, if known, and any return to work restrictions.

When an employee returns to duty following an absence of three (3) days or longer, the Chief of Police or personnel officer may require a signed statement from a doctor or dentist that the employee was incapacitated and unable to perform the employee's duties throughout the entire period of sick leave, and any return to work restrictions.

The failure of the employee to file the personal affidavit or the statement from the doctor or dentist shall result in the employee's ineligibility for sick leave benefits, unless a waiver is granted by the City Manager.

In the case of frequent use of sick leave, the Chief of Police or the personnel officer may request that the employee file a doctor's statement for each such illness regardless of duration. An employee may be required to take an examination by a doctor mutually agreed to by the City and the employee. If requested by the City, the employee shall authorize consultation with the employee's doctor concerning the illness.

On the basis of such medical advice, the City Manager shall determine whether an employee is incapacitated for the duties of the employee's position and may take the action the City Manager considers appropriate.

13.7 Employees working a twelve (12) hour shift will have twelve (12) hours subtracted from their leave balance for each day of sick leave taken.

13.8 Employees working a ten (10) hour shift will have ten (10) hours subtracted from their leave balance for each day of sick leave taken.

13.9 Employees working a ten and one-half (10.5) hour shift will have ten and one-half (10.5) hours subtracted from their leave balance for each day of sick leave taken.

Section 14. Holidays

14.1 Authorized Holidays

Employees shall be entitled to the following paid holidays:

Christmas Day, New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and the Friday following Thanksgiving Day. For the purpose of this section, the holiday shall be considered the day on which it is celebrated.

14.2 Work Performed on Holidays/Holiday Pay

The City and the BPOA agree that public safety employees are scheduled to work on the aforementioned holidays as a matter of health and safety of the community. In lieu of the aforementioned holidays, the City agrees to pay Police Officers represented by the BPOA one and one-twelfth (1-1/12) days' straight-time pay per month.

For purposes of this section, salary includes Salary Schedule Amount +(if applicable) Education Pay + K-9 pay + Corporal pay.

Section 15. Salary Plan

15.1 Salaries

It is the intent of the City to remain competitive in the labor market and provide equitable salaries for its employees.

Salary surveys for market adjustments are calculated at the mean and based on:

Top step base salary
POST/Education pay (BA and/or Advanced POST level)
PERS Pick-up
Uniform Allowance
Insurance (health, dental, vision, life)

Survey Cities are cities of: Brentwood, Davis, El Cerrito, Fairfield, Folsom, Napa, Pleasant Hill, Pinole, Richmond, San Pablo, Vacaville, and Vallejo.

There will be no salary increases during the term of this MOU.

15.2 Salaries - New Employees

A new employee shall be appointed to the first step of the salary range to which the employee is assigned, provided, however, that a new employee may be appointed at a salary in excess of the first step when it is difficult for the City to locate qualified personnel, or when the education and previous training or experience of a new employee is substantially superior to the minimum qualifications for the classification, or (in exceptional cases) at the discretion of the City Manager.

15.3 Anniversary Date

The employee's anniversary date is the first day of the month if employment occurs during the first fifteen (15) days of the month; otherwise, the anniversary date is the first day of the next month.

The anniversary date of an employee on leave without pay for one (1) month or longer, shall be extended by the period of the leave.

15.4 Advancement Within Salary Range/Step Increases

Advancement within the salary range for a classification shall not be automatic. All increases shall be based on merit as established by a record of the employee's performance and shall require the written recommendation of the Chief of Police and approval by the City Manager.

An employee who does not receive an in-grade salary advancement shall be notified in writing by the Chief of Police as to the reason for denial. The City Manager may adjust the salary rate of an employee to any step in the employee's existing salary range to correct gross inequities in salary or to reward outstanding achievement and performance.

15.5 Salary after Promotion or Demotion

When an employee is promoted, the employee's compensation shall be set at Step A or one step higher than the employee's current salary whichever is higher, provided however, the employee's salary shall increase by at least 5%. The employee's new anniversary date shall be the date of the promotion, and will follow the procedure listed in section

15.4 above.

When an employee is demoted to a class with a lower maximum salary, the employee shall be assigned to the applicable salary step in the new class, provided however, that there shall be at least a 5% decrease in salary assuming that the employee's service has been continuous in the new class. The employee shall retain the employee's previous anniversary date.

15.6 Salary after Transfer

When an employee is transferred from one position to another position in the same class or to another class with the same pay range, the employee shall retain the same step and the same anniversary date.

15.7 Acting Pay

(1) Acting "Supervisor" Employees may be assigned to perform the duties of a higher classification on an "acting" basis when in the judgment of the Chief of Police a need exists for work to be performed in such classifications.

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 (6th) consecutive work day and continuing with each consecutive day of work in the higher classification thereafter. As an exception to the foregoing, employees assigned as provided above to perform the duties of a higher classification on an acting basis and who have worked a total of fifteen (15) days accumulated during the current fiscal year in the higher classification shall receive "acting pay" commencing with the sixteenth (16th) day of work in the higher classification during the fiscal year.

An employee qualifying for "acting pay" shall receive an additional five percent (5%) over their current salary range while working in the higher classification. In no event shall an employee receive "acting pay" at a rate which is in excess of the maximum rate of the classification to which he is assigned on an acting basis.

(2) Acting Pay – One Shift: Whenever a bargaining unit employee is required to serve as an acting supervisor for a minimum of one (1) shift, the employee shall be compensated for each shift in that capacity by an increase of $10.00 per shift.

(3) Field Training Officer (FTO) Pay: In order to accurately compensate individuals who are performing the Field Training Officer (FTO) function the following process has been agreed to by the Benicia Police Officers' Association and the City of Benicia.

While an individual is performing Field Training duty they will record on their time sheet those hours spent in active recruit training. The hours listed for Field Training duty shall be paid at 5% of base salary.

Assignment, length of service, and removal as an FTO will be made in accordance with procedures established by the Chief of Police.

Those individuals when functioning as an FTO shall be exempt from receiving "Acting Pay" as specified within Section 15.7(1) and 15.7(2) of this MOU. This section does not replace nor modify Section15.11, Corporal).

All such acting assignments shall be offered on the basis of qualifications for such assignment according to the judgment of the Chief of Police or designee and shall be consistent with Civil Service Personnel Rules and Regulations.

15.8 Shift Differential Pay:

(1) Effective January 1, 2006, sworn personnel assigned to the night shift, defined as 6pm – 6am, shall receive an additional two percent (2%) of their base rate of pay (salary schedule amount + education pay) for all hours worked between 6pm and 6am. For purposes of this section, the term "assigned' means a regular ongoing shift assignment, either as a result of seniority draw provisions or a directed assignment for management reasons.

(2) Sworn personnel working a night shift, in part or in whole, on either a voluntary or mandatory overtime basis shall not receive shift differential pay.

(3) If the City temporarily moves a night shift employee to another shift for business reasons (ie court, training day, etc.), the employee will continue to receive their shift differentia. If the employee is off from work for more than one week, for their own benefit (sick leave, vacation leave, Comp Time Off, etc.), the employee will not receive shift differential for those days off. For the purpose of this section one week shall be defined as five consecutive workdays.

15.9 Pay Day

The pay day for each employee shall be the last day of the month or as authorized by the City Council.

15.10 Terminal Pay

An employee who is terminated is entitled to terminal pay for:

(1) That portion of the final pay period from the first day of the final pay period to the effective date of separation. The day of separation is either the working day specified for the separation or the last day of the pay period if no date is specified;

(2) Accrued vacation actually earned but not taken.

(3) Accrued overtime.

In the case of an employee's death, the City shall pay the employee's beneficiary the sums set forth in items 1 through 2 above provided, however, that the employee must have designated a beneficiary on a form specified by the City Manager. If the form specified by the City Manager has not been completed and returned to the finance director, terminal pay shall be paid to the estate of the employee.

Terminal pay shall be paid to an employee only upon submission by the employee of all city-owned property in the employee's possession including, but not limited to, keys, badges and credit cards.

15.11 Corporal

Four (4) Patrol personnel who qualify for and are designated as Corporals shall receive additional compensation of five percent (5%) over their regular rate of pay. Assignment, length of service, and removal as Corporal will be made in accordance to procedures as established by the Chief of Police. It is understood and agreed that qualifying for Corporal does not guarantee assignment as Corporal and that employees shall be designated as Corporal and removed as Corporal at the sole discretion of the Chief of Police.

Those officers assigned as Corporal shall be exempt from receiving "Acting Pay" as specified within Section 15.8(1) and 15.8(2) and 15.8(3) of this MOU.

15.12 Canine Officer/Handler

(1) Routine Care / Compensation:

The parties agree that the estimated amount of off-duty compensable time attributed to all aspects of canine care, including but not limited to: bathing, brushing, exercising, grooming, cleaning of the dog's kennel or transport vehicle, administering drugs or medicine for illness and/or transporting the dog to and from an animal hospital or veterinarian, and training the dog at home is 20 minutes per day.

All these activities apply to workdays as well as days off duty including during vacation periods.

Employees will be compensated for 20 minutes per day, 7 days per week, at their salary schedule of pay (i.e. police officer step A to E) while they are assigned the duties of canine officer. This pay will continue to be reported to PERS as Special Compensation.

The 20 minutes per day (2.33 hours per week) will be paid as overtime.

(2) Extraordinary Care / Compensation:

All extraordinary work, beyond what is listed in Routine Care, involving the canine handler shall be compensated. This works includes, but is not limited to, unanticipated trips to the emergency vet, special training

not normally conducted on a daily or scheduled basis, or work which causes a substantial increase in work time beyond what is listed in Routine Care, 15.12(1). Any extraordinary care, including overtime, must be approved in advance, except for initial trip to the emergency vet.

(3) Miscellaneous

(a) The City will continue to pay for the cost of food and boarding (e.g. when canine officer/handler is on vacation) directly to the vendor.
(b) The work schedule canine officers work will be based on department needs.
(c) The Police Chief shall have the sole authority to determine if and when a canine will be retired from duty.

As of July 2005, handlers are currently on a trial 4-10 work schedule. With approval of the Police Chief, there may be variations in the employees' work hours keeping in mind the City's need to provide maximum service to the citizens while granting employees a work schedule that best fits their needs as well. The Department Head has the authority to modify or discontinue this work schedule at any time. The City will not change an employee's work schedule for the purpose of avoiding overtime pay.

Section 16. Deferred Compensation

The City agrees that employees represented by the BPOA may participate, at their own expense, in the City's deferred compensation plan.

Section 17. Uniform Allowance

The City agrees to provide a monthly uniform allowance to the employees to cover the costs of purchasing, maintaining and cleaning their uniforms. Said allowance to be $75.00 per month.

Section 18. Educational Incentive

Police Officers and Police Sergeants who were employed by the City on June 30, 1989, shall continue to receive educational incentive pay in accordance with the provisions of Section 18 of the 1987-1989 Benicia Police Benefit Association Memorandum of Understanding: "The City agrees to increase the basic salary for Police Officers and Police Sergeants, represented by BPOA, by

2-1/2% for attainment of a certificate of completion in a police science major from an accredited college or university (30 units). The City will also increase the basic salary for Police Officers and Police Sergeants, represented by BPOA by 7-1/2% for attainment of an Intermediate POST Certificate or Associate of Arts Degree in an approved major from an accredited institution, and by 10% for attainment of an Advanced POST Certificate or Bachelor's Degree in an approved major an accredited institution. It is understood that an approved major shall be designated by the Chief of Police and City Manager.

Police Officers and Police Sergeants hired by the City on or after July 1, 1989 who qualify to receive Educational Incentive Pay shall be compensated in accordance with the following formula:

> Attainment of a Certificate of Completion in a Police Science Major from an accredited college or university (30 units): $70.00 per month.
>
> Attainment of an Intermediate POST Certificate or Associate of Arts Degree in an approved major from an accredited institution: 3.5% increase to basic pay per month.
>
> Attainment of an Advanced POST Certificate or Bachelors Degree in an approved major from an accredited institution: 5.0% increase to basic pay per month.
>
> It is understood that an approved major shall be designated by the Chief of Police and City Manager.

Section 19. Seniority Rights

Seniority is herein defined to be an employee's length of continuous service with the City of Benicia in the current classification plus higher classifications within the Police Department. An individual employee's seniority shall be effective from the date of first employment in a position within the representation unit. The Department will consider seniority in vacation scheduling and shift assignment. For the purposes of vacation scheduling and/or shift assignment for employees holding a promoted position, the effective date of the employee's promotion shall be controlling. In the event of layoff, if an employee has “bumping rights” to a previously held lower classification within the Police Department, then seniority as defined herein, rather than overall City seniority, becomes the determining factor for layoff in that lower classification. Where all else is equal, seniority in rank will be used

in breaking a tie. If there is a tie in seniority in rank then the individual's score on the promotion eligible list will be used to break the tie.

Section 20. Court Appearance

20.1 If any court appearance scheduled for the officer's day off is canceled with less than six (6) hours notice provided to the subpoenaed officer, then the officer shall be compensated for a minimum of four (4) hours overtime at the overtime rate that applies to the officer's classification. As stated on the Court Subpoena, it is the officer's responsibility to check the recorded message at the District Attorney's office the night before the scheduled court appearance to determine the final status of the case. Overtime shall not be paid if the employee did not comply with the call-in instructions on the court subpoena.

20.2 Officers subpoenaed to appear in court on a regularly scheduled work day shall be compensated in the following manner:

When the court appearance is scheduled for a time prior to the officer's regularly scheduled work hours and the officer appears in court, the officer shall be compensated at an overtime rate of one and one-half (1 & 1/2) times the officer's regular rate of pay for a minimum of four hours or until the start of the regularly scheduled work shift which ever is shorter.

When the court appearance is scheduled for a time that the officer is regularly scheduled to work and extends beyond those regularly scheduled hours, the officer shall be compensated at a rate of one and one-half (1&1/2) times the officer's regular rate of pay for the period of time the officer is in court beyond the normally scheduled work hours.

When the court appearance is scheduled for a time after the officer's regularly scheduled work hours, the officer shall be compensated for a minimum of four hours at a rate of pay one and one-half (1&1/2) times their regular rate of pay.

Officers with multiple subpoenas for the same day for appearance times prior to their regularly scheduled work hours may only be compensated at the overtime rate of one and one-half (1&1/2) times their regular rate of pay for the actual time spent in court until the beginning time of their regularly scheduled work shift or for a minimum of four (4) hours, whichever is shorter.

Officers with multiple subpoenas for the same day for appearance times after their regularly scheduled work hours may only be compensated at the overtime rate of one and one-half (1&1/2) times their regular rate of pay for the actual time spent in court or a minimum of four (4) hours, whichever is longer.

An officer with multiple subpoenas for appearances in the morning as well as the afternoon may only claim one four (4) hour minimum for the morning court appearance and one four (4) hour minimum for the afternoon appearance. An officer is precluded from collecting more than eight (8) hours of guaranteed minimums (four (4) in the morning and four (4) in the afternoon).

Section 21. Insurance

21.1 Health and Welfare

(1) 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 through the end of this contract The City may substitute plans currently offered with plans of substantially similar benefits. The City shall contribute the full premium required by the providers of the dental and vision care plans provided herein through the end of this contract.

Effective the first paycheck after ratification of this agreement by the City Council, the City's contribution towards medical premiums for fiscal year 2010 – 2011 shall be a maximum up to the following contributions for any plan:

	Police Officer	Sergeant
Employee:	$245.95	$176.73
Employee plus One:	$838.33	$769.11
Employee plus Family:	$1,229.29	$1,160.07

The City shall allow employees who have dual coverage on their health plan to receive in cash the amount the City contributes towards the single rate based on classification if they decline enrolling in the City's plan.

In order to allow employees in Health Net time to transition to the new capped contribution to any plan, for Health Net participants in effect on November 30, 2010 until June 30, 2011 only, the City shall provide the following additional contribution:

Employee:	$91.64
Employee plus One:	$180.86
Employee plus Family:	$241.77

Effective June 30, 2011 this extra contribution shall expire and the City's contribution for participants for both Kaiser and Health Net shall be as described above.

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.

(2) Pursuant to State law, whenever any peace officer is killed in the performance of his/her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his/her duty, the City shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death of the employee. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until the age of twenty-one (21) years.

21.2 Life Insurance

The City shall pay the entire cost of providing each insurable regular, full-time employee with $30,000 group term life insurance with said policy to include accidental death and dismemberment coverage. The employee, at his/her option, may purchase through payroll deduction, supplemental life insurance as provided by the group insurance carrier.

Section 22. Retirement

22.1 Retirement System (PERS)

The City shall continue its contract with the Public Employees' Retirement System (PERS).

22.2 3% @ 50

Employees employed on or before December 31, 2010 shall receive the retirement benefit option of 3% @ 50 in accordance with Government Code § 21362.3 and shall have their retirement benefit calculated based on their single highest year in accordance with Government Code § 20042.

(1) Based upon actuarial information provided by PERS, in their valuation report dated January 21, 2000, the cost associated with providing the 3% @ 50 retirement benefit for the BPOA has been calculated at 4.774% of salary. The BPOA agrees that the 3% @ 50 retirement benefit option is to be provided with the understanding that, should the City's cost of providing this benefit increase during the term of this agreement, the City has the right to reopen negotiations on payment of this 4.774% cost.

(2) The City has agreed not to re-open this section for the period of this contract.

22.3 Second Tier retirement benefit option

As soon as administratively possible, the parties agree to amend the City's contract with Public Employees Retirement System (PERS) to implement a second tier retirement benefit option of 3% @ 55 and average three year compensation formula in accordance with Government Code § 21362.3 for new hires hired on or after January 1, 2011 or hired upon effective date of the contract amendment consistent with CalPERS requirement. The employees in the second tier shall pay the entire employee share (9%) of retirement cost.

22.4 9% PERS contribution

Each employee covered by this MOU shall pay all of the employee's 9% PERS contribution, and employees are able to defer state and federal income taxes on these contributions, in accordance with the City's IRC 414(h)(2) resolution.

22.5 Credit for Unused Sick Leave

Employees may convert unused sick leave to service credit in accordance with Government Code § 20965.

22.6 Military Service Credit

Employees may purchase up to four years of service credit for any action military or merchant marine service prior to employment in accordance with Government Code § 21024.

22.7 CalPERS Fourth Tier 59 Survivor Benefit

The City implemented the Fourth Tier of the 59 Survivor Benefit with PERS on November 6, 1998. The City and the BPOA agree that there is currently no employer premium for this increased benefit level. The BPOA agrees that once the City is notified that there will be an employer's premium due for this benefit, the BPOA shall commence negotiating with the City to determine the method which will be utilized to pay the premium.

22.8 Pre-Retirement Optional Settlement 2 Death Benefits

The City amended its contract with PERS to include the Pre-Retirement Optional Settlement 2 Death Benefits in accordance with Government Code § 21548. Based upon actuarial information provided by PERS, in their valuation report dated January 21, 2000, the cost associated with providing the Pre-Retirement Optional Settlement 2 Death Benefit for the BPOA has been calculated at .0027% of salary. The City has current excess plan assets to cover the cost of this contract amendment. However, the BPOA agrees that the Pre-Retirement Optional Settlement 2 Death Benefit option is to be provided with the understanding that, should the City's cost of providing this benefit increase during the term of this agreement, the City has the right to reopen negotiations on payment of this .0027% cost.

Section 23. Grievances

23.1 Definition

(1) A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding or disciplinary actions. A disciplinary appeal is an

appeal by an employee of a discharge, demotion, reduction in pay or suspension without pay.

(2) A work day is defined as a day on which administrative offices of the City of Benicia are open for business.

(3) Filing Deadline: No appeal involving discharge, demotion, reduction in pay or suspension without pay will be entertained unless it is filed in writing with the Chief of Police or the City Manager, as appropriate, within ten (10) working days of the date or receipt of written notification of such disciplinary action.

(4) Conflicts of Law: Where any provisions of the Memorandum of Understanding or the City of Benicia Personnel Rules conflict with the provisions of the "Public Safety Officers Procedural Bill of Rights Act" (Government Code Sections 3300 et seq.), the provisions of the Public Safety Officers Procedural Bill of Rights Act will prevail.

(5) Disciplinary Appeal: The employee has the option of two separate Disciplinary Appeal Procedures. After completion of all pre-disciplinary procedural steps in Section 9.7 of the City of Benicia Personnel Rules, the employee may opt for a disciplinary appeal procedure pursuant to this Memorandum of Understanding or disciplinary appeal procedure pursuant to Section 10 of the City of Benicia Personnel Rules.

23.2 Procedure

Grievances shall be processed in the following manner based upon a forty (40) hour work week:

(1) The grievance shall be presented either by the employee or by an authorized Union representative to the designated supervisor of the employee within ten (10) working days after the occurrence of the cause of such grievance.

The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and orally respond. If the grievance is not satisfactorily resolved 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 Chief of Police or his/her

designee.

(2) The Chief of Police or his/her designee shall have ten (10) working days from date of receipt of grievance in which to respond. If the grievance is not satisfactorily resolved 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 City Manager or his/her designee.

(3) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory resolution on any grievance which arises and is presented during the term of this Memorandum of Understanding, a request for hearing such grievance before an Adjustment Board shall be submitted in writing to the Personnel Officer. The Adjustment Board shall be comprised of two (2) Union representatives, no more than one (1) of who 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) or 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

(4) If an Adjustment Board is unable to arrive at a majority decision, either the Union or the City may require that the grievance 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 post hearing briefs, if any. By mutual agreement, the parties may refer the dispute to mediation with the State Mediation and Conciliation Services prior to submitting a grievance to arbitration.

(5) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

23.3 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 as set forth in Section 23.1 (1).

23.4 Change to Memorandum

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrable 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.

23.5 Compensation Complaints

All complaints involving or concerning the payment of compensation shall follow the procedure set forth beginning with section 23.2. 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.

23.6 Personnel Rules

(1) The provisions of this Section shall not abridge any rights to which an employee may be entitled under the Personnel Rules.

(2) All grievances of employees represented by the Union shall be processed under this section. If the Personnel Rules require that a differing option be available to the Employee, no action under paragraph (3) or (4) of Section 23.2 above shall be taken unless it is determined that the employee is not availing himself or herself of such option.

(3) No action under paragraph (2) or (3) of Section 23.2 above shall be taken if action on the complaint or grievance has been taken by the Civil Service Commission, or if the complaint or grievance is pending before the Civil Service Commission.

Section 24. Officer Safety

The City agrees to provide all safety equipment as enumerated in Government Code Section 50081. The City further agrees to replace bullet-proof vests on or before the expiration of the manufacturer's warranty.

Officers shall have a minimum of eight (8) hours off between shifts. If the officer has court or other special duties which does not allow more than eight (8) hours non-work time before the next assigned shift, the officer may take vacation or comp time to make sure he/she had eight (8) hours off and then come in to the shift in progress. Another option could be to adjust the officer's shift to meet the needs of the department and the officer.

A few examples might be but are not limited to the following:

(1) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm that evening, but must be in court between the hours of 2:00 - 5:00 pm. That officer would report as normally scheduled because he/she actually had nine (9) hours of non-work time that day.

(2) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm that evening, but be in court from 10:00 am - 2:00 pm. That officer had four (4) hours non-work time in the morning and four (4) in the afternoon. Due to the fact they may not have had a sufficient amount of rest during their period of eight (8) non-work hours, if the officer wants to come in late, the supervisor could grant vacation leave or compensatory time off.

(3) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm must be in court between 9:00 am - 5:00 pm. The officer would not return to work as there had not been eight (8) hours of non-work time that day.

Section 25. Sick Leave Bank

Purpose

The City shall establish a "Sick Leave Bank" in lieu of providing State Disability Insurance for accidents or illnesses, which are not job related. The Sick Leave Bank will be for the use of those employees faced with a long-term sickness or

disability, and whose personal sick leave, vacation, and compensation time have been exhausted during the course of that illness or accident. This will allow all employees, but especially newer ones with little sick leave accumulation, to enjoy additional income protection and increased peace of mind in the event of serious illness.

Policy: The initial Sick Leave Bank accumulation was created by eligible employees who donated one-half day of earned Sick Leave, which was then matched by the City.

Membership: All participating full-time regular employees or those previous full-time employees who have voluntarily reduced their work hours, shall be included in the Sick Leave Bank. Each new employee automatically is included in the bank upon successful completion of the probationary period. The Benicia Police Officers Association has agreed to participate in the Sick Leave Bank and establishes membership by each employee contributing four (4) hours of sick leave.

Benefits: All employees who have used their personal accumulated sick leave, vacation, and compensation time and who face a prolonged illness or disability as evidenced by medical certification, are eligible to make written application to the Sick Leave Bank Committee for up to thirty (30) days of sick leave from the bank. If this limit is reached and the employee is still unable to return to work, the Sick Leave Bank Committee will review any additional needs of the sick person. In any event, the maximum benefits allowed to any one person will be fifty-two (52) weeks of sick leave, or until forced disability retirement is reached, whichever comes first.

Benefits under this section shall not supplement or continue salary where the employee is on maternity or paternity leave under the Family and Medical Leave Act. The Committee will consider requests for benefits by employees in the aforementioned category only when there are documented extenuating circumstances, i.e. pregnancy, delivery or post birth complications.

Request for Sick Leave Bank Benefits: An employee shall submit a written request for Sick Leave Bank Benefits to the Chief of Police. The Chief of Police shall recommend that the request be granted or denied prior to the request being submitted to the City Manager, or Personnel Services Manager. The request must contain: (a) information regarding the length of time needed and anticipated duration of the illness, injury, or disability; (b) doctor or medical provider written verification; and (c) provide sufficient information related to the circumstances of the particular situation which would help the Sick Leave Bank Committee with its review and decision making. Every effort will be

made to maintain anonymity concerning the identity of the requesting employee. A representative of the Personnel Department, serving as a non-voting member of the Committee, will provide the Sick Leave Bank Committee with a summary of the employee's request and an overview of past leave history.

Sick Leave Bank Committee: The Sick Leave Bank Committee shall be comprised of one (1) department head, one employee from the unrepresented units, three (3) union bargaining unit employees and the Personnel Services Manager as a non-voting member of the committee. The City Manager or his/her designated representative shall appoint members of the committee on an ad-hoc basis. The purpose of the Committee is to decide the appropriateness of a request by an applicant to the Sick Leave Bank and recommend to the City Manager or his/her designee an appropriate course of action to take. The Committee will base its recommendations on the applicant's previous sick leave record, evidence of disability as certified by a proper medical authority, and the number of additional Sick Leave Bank days previously extended to the applicant. The action of the City Manager or his/her designee will be final.

Sick Leave Payback: Any employee who has used sick leave bank days shall be required to pay them back in the form of earned sick leave days. The payback rate will be one (1) sick leave day for every five (15) days granted. This payback is to be pro-rated if more or a lesser amount of days are granted. Sick leave shall be taken from employees earned sick leave as follows: Sick leave shall be paid back at the rate of one-half (1/2) of their accrued sick leave earned until such time that all days are repaid. During any time an employee owes time to the sick leave bank, he/she shall not be entitled to the City's sick leave incentive program (reimbursement of 25% of an employees accrued, but unused, sick leave). The annual 25% sick leave incentive shall be suspended for 2010.

If an employee is injured outside of work by an insured third party and the employee returns to work with the City, the City may exercise its lien rights with all applicable laws relating to this issue.

Section 26 Vantage Care Retirement Health Savings:

Effective January 1, 2007, association members agreed to participate in the ICMA VantageCare retiree health savings program. The City agrees to contribute 2% of basic salary for each enrolled ICMA VantageCare employee.

This provision is suspended for the period of December 1, 2010 through June 30, 2011, and no City contributions shall be made during that time.

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.

Section 27. Closing Clause

26.1 The effective date of this agreement shall be July 1, 2010 and the agreement shall remain in effect through June 30, 2012.

26.2 This agreement shall remain in force after its expiration where negotiations between the employer and the BPOA have not resulted in a new agreement, until such time as a new agreement is reached by both parties.

26.3 Any provisions in this agreement pertaining to work hours, shifts, or personnel assignments may be suspended temporarily by the City where a declared emergency exists as defined by the Civil Disaster Emergency Plan. The City shall have sole power to determine the existence of an emergency and shall meet with the BPOA at the earliest possible time to discuss the suspension of provisions during the declared emergency.

26.4 If any section of this Agreement 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 agreement shall remain in full force and effect for the duration of this Agreement. In the event of invalidation of any Section, the City and the BPOA agree to meet within thirty (30) days for the purpose of renegotiating said Section.

26.5 This Memorandum of Understanding shall be submitted to the City Council for its adoption at its regular meeting.

26.6 Reopener for financial uncertainty: 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 as needed to prevent layoffs of currently funded BPOA members. The City recognizes the BPOA's desire that, in the event that concessions are necessary, the City would consider pre tax

concessions first. The City would make a good faith effort to do so. If the parties are unable to come to an agreement through the meet and confer process then the City shall be able to impose concessions for fiscal year 2011 – 2012. Nothing herein prohibits the City from laying off employees during the duration of this agreement.

In WITNESS WHEREOF, the parties hereto have executed this Agreement this_____ day of_____, 2012.

BENICIA POLICE OFFICERS ASSOCIATION CITY **OF BENICIA**

By_____ By_____

By_____ By

By _____ By

By_____ Approved as to form:

City Attorney

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Section 1. Preamble

This Agreement is entered into by the City of Benicia, hereinafter referred to as the "City" and the Benicia Police Officers Association, hereinafter referred to as "BPOA," for the purpose of promoting harmonious relations between the City and the BPOA, to establish an orderly and peaceful procedure to settle differences which might arise and to set for 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.

Section 2. Recognition

The BPOA is hereby recognized by the City as the bargaining agent for the Police Officers, Police Sergeants, and for employees properly included in the said Bargaining Unit, under the conditions of the State law.

Section 3. Non-Discrimination

The City shall not discriminate against any employee covered by this agreement because of membership or non-membership in the BPOA or authorized activity as required in this agreement on behalf of the members of the BPOA. The BPOA shall not discriminate against any employee covered by this agreement because of membership or non-membership in the BPOA. Neither party shall 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.

Section 4. Employee Rights

Employees shall have the right to fair and equal treatment in all aspects of employment conditions. Neither management nor its representatives shall exercise their rights and authority in relationship to conditions of employment in a capricious, arbitrary, or unreasonable manner. Any punitive personnel action taken which will result in any loss of pay or benefits shall be taken in a manner consistent with Civil Service Rules and Regulations and laws of the State. An employee's salary shall not be directly deposited in the bank by the

City without the employee's consent.

Section 5. Union Business

5.1 The City agrees to provide space on bulletin boards to the BPOA for the announcement of meetings, election of officers of the BPOA and any other material related to the BPOA business. Furthermore, the BPOA shall not post material detrimental to the labor-management relationship nor of a political or controversial nature.

5.2 No BPOA member or representative shall solicit members, engage in organizational work, or participate in other BPOA activities during working hours on the City's premises except as provided for in the processing of grievances, or during periods of negotiations to update the membership on the progress of said negotiations.

5.3 BPOA members or representatives may be permitted to use suitable facilities on the City's premises to conduct BPOA business during non-work hours upon obtaining permission from the City's Personnel Officer or his/her designated representative. Any additional costs involved in such use must be paid by the BPOA.

5.4 BPOA representatives shall be permitted to investigate and discuss grievances during working hours on the City's premises if notification is given to the Personnel Officer or his/her designated representative. If the BPOA representative is an employee of the City, he/she shall request from his/her immediate supervisor, reasonable time off from his/her regular duties to process such grievances. The City will provide a reasonable number of employees with time off, if required, to attend negotiating meetings.

Section 6. Shift Schedule

In consideration for the fact that employees may have to work through their meal period, each shift incorporates a thirty (30) minute paid meal period.

6.1 Twelve (12) hour Shift Schedule and Ten and one-half hour (10.5) Traffic Schedule:

The City shall designate a 7K exemption twenty-eight (28) day work

period pursuant to the Fair Labor Standards Act.

"Patrol Pay" and "Traffic Pay." Although employees who work 12-hour or 10.5-hour schedules shall work and earn overtime pursuant to a 28-day FLSA work period, they shall continue to receive a monthly salary and be paid -on a monthly basis. In recognition of the fact that a 12-hour per day or 10.5-hour per day employee will be regularly scheduled to work a greater number of hours per year than a 10-hour per day employee, 12-hour per day and 10.5-hour per day employees will be paid, in monthly payments, for an additional 104 hours per year, calculated as follows:

> Monthly Salary Schedule Amount + (if applicable: Monthly Education Pay, Canine Pay and/or ~~AS/FTO~~ Corporal Pay) x 12 months x 104 hours / 2080 hours.

Employees will be paid a straight time rate for the first three (3) hours of required training during each of the thirteen (13) twenty-eight (28) day work periods. If the three (3) hours are not used, the obligation is negated for that work period. The department will give employees a minimum of seventy-two (72) hours notice prior to scheduling training identified in this section.

Sick Leave and Annual Leave accrual rates remain as currently calculated (i.e., sick leave will accrue at eight (8) hours but will be taken in twelve (12) hour increments for employees assigned to patrol and ten and one-half (10.5) hour increments for employees assigned to traffic.

Shift Schedule for Employees assigned to patrol:

1. Shifts will have the same fourteen (14) day rotation schedules. (See Attachment 1)

2. Bidding will take place one time each year for two (2) six (6) month periods (December 1 and June 1 rotation dates). Employees may stay on the same watch for two (2) consecutive six (6) months periods and then must bid for the opposite watch (i.e., days to nights).

   In order to provide more flexibility, an employee may bid for any shift/watch as long as it does not conflict with the above paragraph and the employee does not bid for a shift/watch which would require a double-back at shift change.

Bidding for watch/squad schedules will be by seniority.

An Acting Supervisor/Field Training Officer (~~AS/FTO~~ Corporal) shall be assigned to each watch/squad.

No double shifts will be allowed for safety purposes.

The Chief of Police may, at his/her discretion, revoke the Twelve-hour shift schedule in order to provide adequate patrol shift coverage. Prior to revoking the 12-hour shift schedule, unless in the event of an emergency, the Chief of Police will provide the POA with thirty (30) days notice and the POA will have an opportunity to meet with the Chief of Police on the impact of the change.

6.2 Ten (10) Hour Shift Schedule:

Employees assigned to Investigations and Administration Divisions will work a 4/10 Plan.

6.3 Special Assignments:

If a special assignment is posted and no qualified candidates volunteer the Chief of Police will select an employee to fill the position that best meets the needs of the department. This selection will not be deemed punitive even though it may result in a lower net salary (reduction of 104 hours).

SECTION 7. Overtime Work, Recall

7.1 Overtime Work

A. All work performed in excess of an employee's normal work day or in excess of an employee's normal workweek shall be considered overtime work. The parties agree that assignments of overtime work shall rest solely with the Chief of Police or designated representative, taking seniority into consideration whenever possible. The parties agree that the assignment of overtime work is on an involuntary basis and any employee refusing assignment of such work is subject to disciplinary action deemed appropriate by the Chief of Police.

B. 12-Hour Shifts/10.5-Hour Shifts: Employees working 12-hour shifts or 10.5-hour shifts are entitled to overtime for hours worked in excess of twelve (12) in a day for employees assigned to patrol, or in excess of ten and one-half (10.5) in a day for employees assigned to traffic, or in excess of 168 in the 28-day FLSA work period, if required training has not been scheduled. If required training has been scheduled, these employee are entitled to overtime for hours worked in excess of 171 in the 28-day FLSA work period and shall receive straight time for the 169th, 170th, and 171st hours worked, unless otherwise specified in this MOU. The overtime rate for all overtime paid these employees shall be calculated as follows:

Base Pay (salary schedule amount) for 28-day Work Period + Applicable Incentives Earned During 28-Day Work Period x 1.5 / 168 hours.

C. 10 Hour Shifts: Currently, employees working in "investigation" and "administration" work a 4/10 schedule. These employees are entitled to overtime for hours worked in excess of ten (10) in a day or forty (40) in a workweek. The overtime rate for these employees shall be calculated as follows:

Base Pay for Workweek + Applicable Incentives Earned During that Work Week x 1.5 / 40 hours

D. All paid leave will be counted as hours worked for overtime purposes.

E. "Applicable Incentives" for FLSA overtime shall include education pay, acting pay, standby pay, FTO pay, holiday pay and canine officer pay, patrol pay, ~~AS/FTO~~ Corporal pay, and shift differential.

7.2 Compensation for Overtime Work

All overtime work must be approved in advance by the Chief of Police or their designated representative; provided, however, that when emergency conditions exist, the Chief of Police may approve exceptions to the procedure.

Any authorized time worked in excess of the employee's normal work day shall be compensated at the rate of one and one-half (1 & 1/2) times the employee's regular straight-time rate of pay. Compensatory time off may

be taken in lieu of overtime payment. Such time off shall be mutually agreeable to the employee and the Chief of Police or his/her designated representative. Compensatory time off which accrues in excess of forty (40) hours must be liquidated by monetary payment.

7.3 Call Out

If an employee is called to work at a time other than his/her scheduled work shift, he/she shall be credited with a minimum of four (4) hours at one and one-half times his/her straight-time hourly rate; provided, however, that this provision shall not apply if the employee is called to work immediately preceding his/her scheduled work shift or is held over for work immediately following the scheduled work shift.

7.4 On Call Time

Detectives and/or any employees assigned to standby status shall be compensated at the rate of eight (8) hours of straight-time pay for each week the Detective or any employee is assigned to standby. In the event an employee on standby is called out to work, he/she shall receive a minimum of three (3) hours pay at the rate of time and one-half (1&1/2). If the employee is called out more than once during a single three (3) hour period, only (1) Call Out shall be authorized.

7.5 Daylight Savings Time

On any weekend during which there is a change to or from Standard Time to Daylight Savings time, the Chief of Police may adjust work schedules so that those assigned to work do actually work the regular number of hours normally assigned to the shift.

The "time change hour" for Daylight Savings shall not be included in the definition of actual hours worked or be considered for pay purposes, and no employee assigned to a shift who works during the transition to or from Standard Time to Daylight Savings Time shall be paid any sum except for actual hours worked during said shift.

Section 8. Agency Shop ~~Dues Check off~~

~~The City shall cooperate with the BPOA in the collection of BPOA dues by~~

~~requesting the Finance Director to withhold from the payroll warrants of those employees who are members of the BPOA, such amount of dues and at such time as it is certified to the City by the BPOA. The City's request to the Finance Director shall include a direction to remit to the BPOA Treasurer, such amounts as are withheld. The BPOA shall be responsible for certifying current withholding lists to the City so the same may be submitted with the payrolls, and no employee's name shall be included on such certified list unless he/she is a member of the BPOA and unless he/she has given to the City a written authorization for such withholding. Nothing in this Section implies that any member of the department must join the BPOA as a condition of employment.~~

8.1 Agency Shop: As a condition of continuing employment, employees shall become and remain members of the Association or shall pay to the Association a service fee in lieu thereof. Such service fee shall be established by the Association and shall not exceed that portion of the Association's dues and initiation fees (herein after collectively termed "service fee") paid by members of the Association as are expended by the Association in fulfilling its responsibilities for representing members of the Representation Unit in the negotiation and administration of the Memorandum of Understanding. Initiation fees shall only apply to employees hired after implementation of this agreement. The Association shall comply with the rules governing the establishment of agency shop fees as set forth in the U.S. Supreme Court's decision in March, 1986 in Chicago Teachers Association v. Hudson.

8.2 Implementation: Not later than thirty (30) days after approval of this Agency Shop Agreement, the City shall deliver to each employee subject to this Memorandum of Understanding who is not also a member of the Association a notice advising that the City has entered into an Agency Shop Agreement with the Association and that all employees subject to the Memorandum of Understanding must either join the Association, pay a service fee to the Association, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Association dues or a service fee, or a charitable contribution equal to the service fee.

8.3 Payroll Deductions: The City shall deduct Association dues or service fees and premiums for approved insurance programs from the employee's pay in conformity with State and City regulations. The City shall promptly pay over to the designated payee all sums so deducted. The City shall also periodically provide the Association with a list of all persons making charitable deductions pursuant to the religious

exemption granted herein.

8.4 Hold Harmless: The BPOA shall indemnify, defend, and save harmless the City of Benicia, its officers, employees and agents acting on its behalf from and against any and all losses, damages, costs, expenses, claims, demands, actions, suits, judgments and other forms of liability arising out of the application or enforcement of this Section. ~~In addition, the BPOA shall refund to the City of Benicia any amounts paid to it in error upon presentation of supporting evidence.~~ In no event shall the City be required to pay from its own funds Association dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

8.5 Election: The election to implement the provisions of this agreement shall not prohibit or restrict an election to rescind this Section as provided for by Section 3502.5 of the Government Code.

Section 9. No Strike - No Lockout

9.1 The BPOA agrees that participation in a strike shall subject an employee to disciplinary action, up to and including discharge.

9.2 The BPOA, its representatives, or members, shall not engage or cause, instigate, encourage, sanction, or condone a strike of any kind. No employee shall refuse to cross any picket line in the conduct of official City business, nor shall the BPOA, its representatives, or members, discriminate in any way toward anyone who refuses to participate in a strike. Strike means the concerted failure to perform or report to duty for the purpose of inducing, influencing, or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

9.3 The City shall not institute, authorize, cause, aid, ratify, or condone any action to provoke interruption of or prevent the continuity of work normally and usually performed by employees for the purpose of coercing the employees into relinquishing rights guaranteed under the law. The City shall not, during the terms of this Memorandum, engage in any lockout of employees represented by the BPOA.

Section 10. Management Rights

The employee organization, BPOA, agrees that the City retains all its remaining rights and authority under law and expressly and exclusively retains its management rights not affected by this Agreement which include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons; maintain the efficiency of government operations; determine the methods, means and number and 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 subcontract any work 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 the technology of performing its work. Management rights shall be exercised in a manner consistent with applicable laws and the Rules and Regulations of the Benicia Civil Service Commission.

Throughout this MOU the phrase "Chief of Police" is referenced. The Chief of Police retains the right to delegate their authority for a particular section to another designee, based on operational needs.

Section 11. Vacation Leave and Annual Personal Leave

11.1 Vacation Leave - Accrual

For the purpose of this section a work day equals eight (8) hours. The authorized annual vacation leave granted employees after 6 months of continuous -City service shall be as follows:

(1) From one (1) through three (3) years of continuous service - ten (10) work days.

(2) From four (4) through nine (9) years of continuous service - fifteen (15) work days.

(3) From ten (10) through nineteen (19) years of continuous service - twenty (20) work days.

(4) For twenty (20) years or more of continuous service - twenty-five (25) work days.

In order to recruit qualified police officer candidates, the Police Chief may approve a new lateral police officer to begin accruing at a higher vacation level commensurate with their years of lateral experience. This level will be negotiated between the Police Chief and the employee. The employee's years of experience will follow them forward for the purpose of calculating when they are eligible to move to the next vacation accrual level. This section applies to employees hired after January 1, 2005 only where a specific agreement has been made between the Police Chief and the employee at time of employment. This section will not be applied to any other employee retroactively. Total years of service in law enforcement will only be recognized for the purposes of accruing vacation and will not be used to calculate any other benefits (such as seniority, longevity, etc.).

11.2 Earning Vacation Leave

Full vacation leave as set forth in Section 11.1 shall be earned by:

(1) An employee on sick leave with pay.

(2) By a Safety Member while on a leave of absence covered by California Labor Code Section 4850.

(3) An employee on jury leave.

Vacation leave as set forth in Section 11.1 shall not be earned by:

(1) An employee on an unpaid leave of absence.

11.3 Scheduling Vacation Leave

Vacation selection will be by seniority on the watch/squad to which the employee is scheduled during the time of the vacation leave. The employees will make vacation selections after the October watch/squad selection. Only one Officer and one Sergeant from each watch/squad will be allowed to take their scheduled annual vacation at the same time, and only one patrol Sergeant may be on scheduled annual vacation at any given time. The patrol Lieutenant may authorize more than one patrol Sergeant to be off on vacation leave for short periods and individual days depending upon staffing levels.

The scheduling of vacation leave shall be determined by the Chief of Police based on the wishes of the employee and with particular regard for the needs of the City.

Employees are encouraged to take vacation leave in increments of one (1) week at a time.

11.4 Sick Leave During Vacation Leave

An employee may change vacation leave to sick leave upon submission of a doctor's certificate that the employee is ill and unable to work.

11.5 Annual Personal Leave Allowance

Employees covered by this Agreement will earn 8 hours of personal leave per fiscal year. The employee may use such leave for any purpose subject to advance approval of his/her
absence. The Personal Leave Day must be used and cannot be carried over from one fiscal year to the next.

11.6 Vacation Accrual Limits

Employees covered by this Agreement may exceed vacation accrual limits during a calendar year, however, the accrual limit ceiling of 360 hours

will be imposed on December 31st of each year.

11.7 12-Hour Shift

Employees working a twelve (12) hour shift will have twelve (12) hours subtracted from their leave balance for each day of vacation taken.

11.8 10-Hour Shift

Employees working a ten (10) hour shift will have ten (10) hours subtracted from their leave balance for each day of vacation taken.

11.9 10.5-Hour Shift

Employees working a ten and one-half (10.5) hour shift will have ten and one-half (10.5) hours subtracted from their leave balance for each day of vacation leave taken.

Section 12. Leave of Absence

12.1 Definition

A leave of absence is a privilege which may be granted to an employee wishing to leave the City service without pay and in good standing for a limited period of time.

12.2 Procedure

(1) A request for a leave of absence without pay must be made to the Chief of Police in writing by the employee stating the dates of leave of absence requested and the reason for the request.

(2) The Chief of Police 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.

(3) An employee shall be entitled to payment for any earned vacation

and accumulated overtime at the beginning of an approved leave of absence.

12.3 Unauthorized Leave of Absence

The failure of an employee to return to duty upon the termination of an authorized leave of absence is an unauthorized leave of absence.

An unauthorized leave of absence is grounds for disciplinary action, including dismissal, unless upon the employee's return, the employee furnishes reasons satisfactory to the Chief of Police and the City Manager for not having obtained an authorized leave of absence. The unauthorized leave of absence shall be treated as time not worked. The City shall deduct from the employee's pay, an amount equal to time absent from City service.

12.4 Jury Leave

When an employee is summoned for jury duty, the employee shall be granted a leave for jury duty, upon presentation of the summons to the Chief of Police.

An employee shall receive full pay while on leave for jury duty; provided, however, the employee must remit compensation received for jury duty, except compensation for mileage. An employee who elects to retain compensation received for jury duty shall not receive salary while on jury duty.

When an employee is released from jury duty, the employee shall report for duty on his next regularly scheduled day unless called to duty to fill a short shift or under emergency conditions.

12.5 Bereavement Leave

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

(1) The Chief of Police may allow an employee a leave of absence up to

three (3) days to attend the funeral of a member of the employee's immediate family.

(2) Up to an additional two (2) days may be granted for out-of state funerals.

(3) The Chief of Police may allow an employee leave of absence up to one day 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. Additional time may be charged to compensatory time or vacation leave.

(4) 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 member of the employee's household.

12.6 Military Leave

Military Leave shall be granted in accordance with the provisions of state and federal law. An employee taking military leave shall give the Chief of Police a copy of the employee's orders to report to military duty.

12.7 Maternity/Paternity Leave

A pregnant employee shall be entitled to a maternity leave of absence in accordance with State and federal laws. Employees shall be entitled to paternity leave in accordance with State and Federal laws.

Section 13. Sick Leave

13.1 Eligibility and Accrual

(1) Employees shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. For the purpose of this section one (1) day equals eight (8) hours. Employees shall earn sick leave at the rate of one (1) day for each calendar month of service. Full sick leave is earned by each full-time employee while on paid leave of absence, including sick leave

and jury leave. Safety members shall accrue full sick leave while on paid disability accident leave. Sick leave shall not be earned by employees on unpaid leave of absence.

In order to recruit qualified police officer candidates, the Police Chief may approve a new lateral officer to begin their employment with the City of Benicia with up to ninety-six (96) hours of sick leave available for use during their first year of employment. The employee will accrue the standard eight (8) hours per month, but would be able to use additional leave that they have not yet accrued, up to the maximum of 96 hours. Should the employee be terminated or leave the City prior to completion of one year of employment, any sick leave used and not accrued will be reimbursed to the City, as the City does not pay out the cash value of sick leave upon separation. This section applies only to employees hired after August 1, 2007, and only where a specific agreement has been made between the Police Chief and the employee at time of employment. This section will not be applied to any other employee retroactively.

13.2 Usage of Sick Leave

(1) Permissible Usage of Sick Leave. Sick Leave is provided to continue the salary of an eligible employee who is absent from work because of an illness.

(a) Employee Illness / Medical Appointment: With the prior approval of the Chief of Police an employee may use accumulated sick leave for medical or dental appointments. Sick leave granted in accordance with the provisions in this sub section shall be so documented on the employee's time sheet and in the employee's personnel records.

(b) Family Member Illness / Medical Appointment: Family Care (Labor Code Section 233). Employees may use one half of their annual accrual worth of sick leave to care for an ill family member. Under this section, family member includes Child, Parent, Spouse, and Domestic Partner. Mothers-in-law, fathers-in-law, and grandparents are not considered “parents” for purposes of this law. The illness does not have to be serious in nature and includes doctors appointments. These days may not be carried over from year to year. Conditions and restrictions contained in this

Memorandum of Understanding for an employee's use of sick leave also apply to sick leave used under this section.

Any employee on authorized leave under Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), or other federal or state law shall be governed by the provisions of said regulations.

(2) Non-permissible Usage of Sick Leave. Unless otherwise permitted by law, no employee shall be entitled to use sick leave with pay while absent from duty under any of the following conditions:

(a) Disability arising from sickness or injury purposely self-inflicted or caused by employee's willful misconduct;

(b) Disability arising from sickness or injury sustained while on unpaid leave of absence;

(c) Disability arising from sickness or injury related to compensated employment other than with the City;

(d) Disability arising from sickness or injury while receiving compensation from the City for an industrial accident pursuant to Section 13.1.

(e) For absence caused by intoxication or excessive use of alcoholic beverages.

13.3 Accumulation

Accumulation of sick leave by all employees shall be unlimited.

13.4 Notification

To receive sick leave, an employee must notify the department at least one (1) hour prior to the commencement of the employee's scheduled shift. The Police Chief, at their discretion, may waive the one (1) hour requirement based on circumstances.

13.5 Sick Leave Conversion

The City agrees to convert 25% of accrued sick leave upon retirement (service or disability) to cash, payable to the retiring employee, provided he/she has at least twelve (12) years service. In no case shall such payment exceed one months' salary for the incumbent position in effect at the time of retirement.

For purposes of this section salary includes Salary Schedule Amount + Education Pay.

13.6 Return to Employment Following Sick Leave

When an employee returns to duty following an absence chargeable to sick leave, the Chief of Police or the City's personnel officer may require an affidavit ~~showing the nature of the cause of sickness or injury.~~ stating the duration of the illness/injury, if known, and any return to work restrictions.

When an employee returns to duty following an absence of three (3) days or longer, the Chief of Police or personnel officer may require a signed statement from a doctor or dentist that the employee was incapacitated and unable to perform the employee's duties throughout the entire period of sick leave, and any return to work restrictions.

The failure of the employee to file the personal affidavit or the statement from the doctor or dentist shall result in the employee's ineligibility for sick leave benefits, unless a waiver is granted by the City Manager.

In the case of frequent use of sick leave, the Chief of Police or the personnel officer may request that the employee file a doctor's statement for each such illness regardless of duration. An employee may be required to take an examination by a doctor mutually agreed to by the City and the employee. If requested by the City, the employee shall authorize consultation with the employee's doctor concerning the illness.

On the basis of such medical advice, the City Manager shall determine whether an employee is incapacitated for the duties of the employee's position and may take the action the City Manager considers appropriate.

13.7 Employees working a twelve (12) hour shift will have twelve (12) hours subtracted from their leave balance for each day of sick leave taken.

13.8 Employees working a ten (10) hour shift will have ten (10) hours subtracted from their leave balance for each day of sick leave taken.

13.9 Employees working a ten and one-half (10.5) hour shift will have ten and one-half (10.5) hours subtracted from their leave balance for each day of sick leave taken.

Section 14. Holidays

14.1 Authorized Holidays

Employees shall be entitled to the following paid holidays:

Christmas Day, New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and the Friday following Thanksgiving Day. For the purpose of this section, the holiday shall be considered the day on which it is celebrated.

14.2 Work Performed on Holidays/Holiday Pay

The City and the BPOA agree that public safety employees are scheduled to work on the aforementioned holidays as a matter of health and safety of the community. In lieu of the aforementioned holidays, the City agrees to pay Police Officers represented by the BPOA one and one-twelfth (1-1/12) days' straight-time pay per month.

For purposes of this section, salary includes Salary Schedule Amount +(if applicable) Education Pay + K-9 pay + ~~AS/FTO~~ Corporal pay.

Section 15. Salary Plan

~~15.1 PERS Contribution~~

~~(1) Effective December 1, 1994, the City converted the employer-paid employee 9% P.E.R.S. contribution to salary and allow all employees in the bargaining unit to begin paying their own P.E.R.S. contribution.~~

~~(2) The City implemented Internal Revenue Code Section 414 (h) (2)~~

~~which will allow all employees in the bargaining unit to defer paying taxes on their contribution to P.E.R.S. (9%) until retirement or receipt of a lump sum payment (refund).~~

15.~~2~~1 Salaries

It is the intent of the City to remain competitive in the labor market and provide equitable salaries for its employees.

~~The base salaries of Police Officer and Police Sergeant shall be increased as follows:~~

~~July 1, 2006~~	~~2% Cost of Living~~
~~July 1, 2006~~	~~3% Market Adjustment~~
~~January 1, 2007~~	~~2% into Vantage Care (see section 26)~~
~~July 1, 2007~~	~~Market Adjustment~~
~~July 1, 2008~~	~~2% Cost of Living~~
~~January 1, 2009~~	~~2% Cost of Living~~
~~July 1, 2009~~	~~Market Adjustment~~

Salary surveys for market adjustments are calculated at the mean and based on:

Top step base salary
POST/Education pay (BA and/or Advanced POST level)
PERS Pick-up
Uniform Allowance
Insurance (health, dental, vision, life)

~~Deferred Comp / Vantage Care (this item will be removed with the 7/1/09 survey / adjustment)~~

Survey Cities are cities of: Brentwood, Davis, ~~Dixon,~~ El Cerrito, Fairfield, Folsom, Napa, Pleasant Hill, Pinole, Richmond, San Pablo, Vacaville, and Vallejo. ~~Effective 7/1/07, Dixon will be removed and Brentwood added.~~

~~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.~~

There will be no salary increases during the term of this MOU.

15.~~3~~2 Salaries - New Employees

A new employee shall be appointed to the first step of the salary range to which the employee is assigned, provided, however, that a new employee may be appointed at a salary in excess of the first step when it is difficult for the City to locate qualified personnel, or when the education and previous training or experience of a new employee is substantially superior to the minimum qualifications for the classification, or (in exceptional cases) at the discretion of the City Manager.

15.~~4~~3 Anniversary Date

The employee's anniversary date is the first day of the month if employment occurs during the first fifteen (15) days of the month; otherwise, the anniversary date is the first day of the next month.

The anniversary date of an employee on leave without pay for one (1) month or longer, shall be extended by the period of the leave.

15.~~5~~4 Advancement Within Salary Range/Step Increases

Advancement within the salary range for a classification shall not be automatic. All increases shall be based on merit as established by a record of the employee's performance and shall require the written recommendation of the Chief of Police and approval by the City Manager.

An employee who does not receive an in-grade salary advancement shall be notified in writing by the Chief of Police as to the reason for denial. The City Manager may adjust the salary rate of an employee to any step in the employee's existing salary range to correct gross inequities in salary or to reward outstanding achievement and performance.

15.~~6~~5 Salary after Promotion or Demotion

When an employee is promoted, the employee's compensation shall be set at Step A or one step higher than the employee's current salary whichever is higher, provided however, the employee's salary shall increase by at least 5%. The employee's new anniversary date shall be the date of the promotion, and will follow the procedure listed in section 15.4 above.

When an employee is demoted to a class with a lower maximum salary, the employee shall be assigned to the applicable salary step in the new class, provided however, that there shall be at least a 5% decrease in salary assuming that the employee's service has been continuous in the new class. The employee shall retain the employee's previous anniversary date.

15.~~7~~6 Salary after Transfer

When an employee is transferred from one position to another position in the same class or to another class with the same pay range, the employee shall retain the same step and the same anniversary date.

15.~~8~~7 Acting Pay

(1) Acting "Supervisor" Employees may be assigned to perform the duties of a higher classification on an "acting" basis when in the judgment of the Chief of Police a need exists for work to be performed in such classifications.

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 (6th) consecutive work day and continuing with each consecutive day of work in the higher classification thereafter. As an exception to the foregoing, employees assigned as provided above to perform the duties of a higher classification on an acting basis and who have worked a total of fifteen (15) days accumulated during the current fiscal year in the higher classification shall receive "acting pay" commencing with the sixteenth (16th) day of work in the higher classification during the fiscal year.

An employee qualifying for "acting pay" shall receive an additional five percent (5%) over ~~his/her then~~ their current salary range while working in the higher classification. In no event shall an employee receive "acting pay" at a rate which is in excess of the maximum rate of the classification to which he is assigned on an acting basis.

(2) Acting Pay – One Shift: Whenever a bargaining unit employee is required to serve as an acting supervisor for a minimum of one (1) shift, the employee shall be compensated for each shift in that capacity by an increase of $10.00 per shift.

(3) Field Training Officer (FTO) Pay: In order to accurately compensate individuals who are performing the Field Training Officer -(FTO) function the following process has been agreed to by the Benicia Police Officers' Association and the City of Benicia.

While an individual is performing Field Training duty they will record on their time sheet those hours spent in active recruit training. The hours listed for Field Training duty shall be paid at 5% of base salary.

Assignment, length of service, and removal as an FTO will be made in accordance with procedures established by the Chief of Police.

Those individuals when functioning as an FTO shall be exempt from receiving "Acting Pay" as specified within Section 15.~~8~~7(1) and 15.~~8~~7(2) of this MOU. This section does not replace nor modify Section15.11, ~~Acting Supervisor/Field Training Officer (AS/FTO~~ Corporal).

All such acting assignments shall be offered on the basis of qualifications for such assignment according to the judgment of the Chief of Police or ~~the Chief of Police's authorized representative~~ designee and shall be consistent with Civil Service Personnel Rules and Regulations.

15.~~9~~8 Shift Differential Pay:

(1) Effective January 1, 2006, sworn personnel assigned to the night shift, defined as 6pm – 6am, shall receive an additional two percent (2%) of their base rate of pay (salary schedule amount + education pay) for all hours worked between 6pm and 6am. For purposes of this section, the term "assigned' means a regular ongoing shift assignment, either as a result of seniority draw provisions or a directed assignment for management reasons.

(2) Sworn personnel working a night shift, in part or in whole, on either a voluntary or mandatory overtime basis shall not receive shift differential pay.

(3) If the City temporarily moves a night shift employee to another shift for business reasons (ie court, training day, etc.), the employee will continue to receive their shift differentia. If the employee is off from work for more than one week, for their own benefit (sick leave, vacation leave, Comp Time Off, etc.), the employee will not receive shift differential for those days off. For

the purpose of this section one week shall be defined as five consecutive workdays.

15.~~10~~9 Pay Day

The pay day for each employee shall be the last day of the month or as authorized by the City Council.

15.~~11~~10 Terminal Pay

An employee who is terminated is entitled to terminal pay for:

(1) That portion of the final pay period from the first day of the final pay period to the effective date of separation. The day of separation is either the working day specified for the separation or the last day of the pay period if no date is specified;

(2) Accrued vacation actually earned but not taken.

(3) Accrued overtime.

In the case of an employee's death, the City shall pay the employee's beneficiary the sums set forth in items 1 through 2 above provided, however, that the employee must have designated a beneficiary on a form specified by the City Manager. If the form specified by the City Manager has not been completed and returned to the finance director, terminal pay shall be paid to the estate of the employee.

Terminal pay shall be paid to an employee only upon submission by the employee of all city-owned property in the employee's possession including, but not limited to, keys, badges and credit cards.

15.1~~2~~1 ~~Acting Supervisor/Field Training Officer~~ Corporal

Four (4) Patrol personnel who qualify for and are designated as ~~Acting Supervisor/Field Training Officers (AS/FTO)~~ Corporals shall receive additional compensation of five percent (5%) over their regular rate of pay. Assignment, length of service, and removal as ~~an AS/FTO~~ Corporal will be made in accordance to procedures as established by the Chief of Police. It is understood and agreed that qualifying for ~~AS/FTO~~ Corporal does not guarantee assignment as ~~an AS/FTO~~ Corporal and that

employees shall be designated as ~~AS/FTO~~ Corporal and removed as ~~AS/FTO~~ Corporal at the sole discretion of the Chief of Police.

Those officers assigned as ~~AS/FTO~~ Corporal shall be exempt from receiving "Acting Pay" as specified within Section 15.8(1) and 15.8(2) and 15.8(3) of this MOU.

15.12 Canine Officer/Handler

(1) Routine Care / Compensation:

The parties agree that the estimated amount of off-duty compensable time attributed to all aspects of canine care, including but not limited to: bathing, brushing, exercising, grooming, cleaning of the dog's kennel or transport vehicle, administering drugs or medicine for illness and/or transporting the dog to and from an animal hospital or veterinarian, and training the dog at home is 20 minutes per day.

All these activities apply to workdays as well as days off duty including during vacation periods.

Employees will be compensated for 20 minutes per day, 7 days per week, at their salary schedule of pay (i.e. police officer step A to E) while they are assigned the duties of canine officer. This pay will continue to be reported to PERS as Special Compensation.

The 20 minutes per day (2.33 hours per week) will be paid as overtime.

(2) Extraordinary Care / Compensation:

All extraordinary work, beyond what is listed in Routine Care, involving the canine handler shall be compensated. This works includes, but is not limited to, unanticipated trips to the emergency vet, special training not normally conducted on a daily or scheduled basis, or work which causes a substantial increase in work time beyond what is listed in Routine Care, 15.12(1). Any extraordinary care, including overtime, must be approved in advance, except for initial trip to the emergency vet.

(3) Miscellaneous

(a) The City will continue to pay for the cost of food and boarding (e.g. when canine officer/handler is on vacation) directly to the vendor.

(b) The work schedule canine officers work will be based on

department needs.

(c) The Police Chief shall have the sole authority to determine if and when a canine will be retired from duty.

As of July 2005, handlers are currently on a trial 4-10 work schedule. With approval of the Police Chief, there may be variations in the employees' work hours keeping in mind the City's need to provide maximum service to the citizens while granting employees a work schedule that best fits their needs as well. The Department Head has the authority to modify or discontinue this work schedule at any time. The City will not change an employee's work schedule for the purpose of avoiding overtime pay.

Section 16. Deferred Compensation

The City agrees that employees represented by the BPOA may participate, at their own expense, in the City's deferred compensation plan.

Section 17. Uniform Allowance

The City agrees to provide a monthly uniform allowance to the employees to cover the costs of purchasing, maintaining and cleaning their uniforms. Said allowance to be $75.00 per month.

Section 18. Educational Incentive

Police Officers and Police Sergeants who were employed by the City on June 30, 1989, shall continue to receive educational incentive pay in accordance with the provisions of Section 18 of the 1987-1989 Benicia Police Benefit Association Memorandum of Understanding: "The City agrees to increase the basic salary for Police Officers and Police Sergeants, represented by BPOA, by 2-1/2% for attainment of a certificate of completion in a police science major from an accredited college or university (30 units). The City will also increase the basic salary for Police Officers and Police Sergeants, represented by BPOA by 7-1/2% for attainment of an Intermediate POST Certificate or Associate of Arts Degree in an approved major from an accredited institution, and by 10% for attainment of an Advanced POST Certificate or Bachelor's Degree in an approved major an accredited institution. It is understood that an approved major shall be designated by the Chief of Police and City Manager.

Police Officers and Police Sergeants hired by the City on or after July 1, 1989 who qualify to receive Educational Incentive Pay shall be compensated in

accordance with the following formula:

Attainment of a Certificate of Completion in a Police Science Major from an accredited college or university (30 units): $70.00 per month.

Attainment of an Intermediate POST Certificate or Associate of Arts Degree in an approved major from an accredited institution: 3.5% increase to basic pay per month.

Attainment of an Advanced POST Certificate or Bachelors Degree in an approved major from an accredited institution: 5.0% increase to basic pay per month.

It is understood that an approved major shall be designated by the Chief of Police and City Manager.

Section 19. Seniority Rights

Seniority is herein defined to be an employee's length of continuous service with the City of Benicia in the current classification plus higher classifications within the Police Department. ~~representation unit covered by this Memorandum of Understanding.~~ An individual employee's seniority shall be effective from the date of first employment in a position within the representation unit. The Department will consider seniority in vacation scheduling and shift assignment. For the purposes of vacation scheduling and/or shift assignment for employees holding a promoted position, the effective date of the employee's promotion shall be controlling. In the event of layoff, if an employee has "bumping rights" to a previously held lower classification within the Police Department, then seniority as defined herein, rather than overall City seniority, becomes the determining factor for layoff in that lower classification. Where all else is equal, seniority in rank will be used in breaking a tie. If there is a tie in seniority in rank then the individual's score on the promotion eligible list will be used to break the tie.

Section 20. Court Appearance

20.1 If any court appearance scheduled for the officer's day off is canceled with less than six (6) hours notice provided to the subpoenaed officer, then the officer shall be compensated for a minimum of four (4) hours overtime at the overtime rate that applies to the officer's classification. As stated on the Court Subpoena, it is the officer's responsibility to check the recorded message at the District Attorney's office the night before the

scheduled court appearance to determine the final status of the case. Overtime shall not be paid if the employee did not comply with the call-in instructions on the court subpoena.

20.2 Officers subpoenaed to appear in court on a regularly scheduled work day shall be compensated in the following manner:

When the court appearance is scheduled for a time prior to the officer's regularly scheduled work hours and the officer appears in court, the officer shall be compensated at an overtime rate of one and one-half (1 & 1/2) times the officer's regular rate of pay for a minimum of four hours or until the start of the regularly scheduled work shift which ever is shorter.

When the court appearance is scheduled for a time that the officer is regularly scheduled to work and extends beyond those regularly scheduled hours, the officer shall be compensated at a rate of one and one-half (1&1/2) times the officer's regular rate of pay for the period of time the officer is in court beyond the normally scheduled work hours.

When the court appearance is scheduled for a time after the officer's regularly scheduled work hours, the officer shall be compensated for a minimum of four hours at a rate of pay one and one-half (1&1/2) times their regular rate of pay.

Officers with multiple subpoenas for the same day for appearance times prior to their regularly scheduled work hours may only be compensated at the overtime rate of one and one-half (1&1/2) times their regular rate of pay for the actual time spent in court until the beginning time of their regularly scheduled work shift or for a minimum of four (4) hours, whichever is shorter.

Officers with multiple subpoenas for the same day for appearance times after their regularly scheduled work hours may only be compensated at the overtime rate of one and one-half (1&1/2) times their regular rate of pay for the actual time spent in court or a minimum of four (4) hours, whichever is longer.

An officer with multiple subpoenas for appearances in the morning as well as the afternoon may only claim one four (4) hour minimum for the morning court appearance and one four (4) hour minimum for the afternoon appearance. An officer is precluded from collecting more than eight (8) hours of guaranteed minimums (four (4) in the morning and four (4) in the afternoon).

Section 21. Insurance

21.1 Health and Welfare

-(1) 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 through the end of this contract The City may substitute plans currently offered with plans of substantially similar benefits. ~~The City's maximum liability for premium contributions 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 then current Kaiser Foundation contribution rate, fifty percent (50%) of the difference between the current Kaiser Foundation contribution rate and the then current contribution rate charged by the City's individual practitioner Health Maintenance Organization provider 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 through the end of this contract. ~~.~~

Effective the first paycheck after ratification of this agreement by the City Council, the City's contribution towards medical premiums for fiscal year 2010 – 2011 shall be a maximum up to the following contributions for any plan:

	Police Officer	Sergeant
Employee:	$245.95	$176.73
Employee plus One:	$838.33	$769.11
Employee plus Family:	$1,229.29	$1,160.07

The City shall allow employees who have dual coverage on their health plan to receive in cash the amount the City contributes towards the single rate based on classification if they decline enrolling in the City's plan.

In order to allow employees in Health Net time to transition to the new capped contribution to any plan, for Health Net participants in effect on November 30, 2010 until June 30, 2011 only, the City shall provide the following additional contribution:

Employee:	$91.64
Employee plus One:	$180.86
Employee plus Family:	$241.77

Effective June 30, 2011 this extra contribution shall expire and the City's contribution for participants for both Kaiser and Health Net shall be as described above.

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.

(2) Pursuant to State law, whenever any peace officer is killed in the performance of his/her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his/her duty, the City shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death of the employee. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until the age of twenty-one (21) years.

21.2 Life Insurance

The City shall pay the entire cost of providing each insurable regular, full-time employee with $30,000 group term life insurance with said policy to include accidental death and dismemberment coverage. The employee, at his/her option, may purchase through payroll deduction, supplemental life insurance as provided by the group insurance carrier.

~~21.3 CalPERS Fourth Tier 59 Survivor Benefit~~

~~The City implemented the Fourth Tier of the 59 Survivor Benefit with PERS on November 6, 1998. The City and the BPOA agree that there is currently no employer premium for this increased benefit level. The BPOA agrees that once the City is notified that there will be an employer's premium due for this benefit, the BPOA shall commence negotiating with the City to determine the method which will be utilized to pay the premium.~~

~~21.4 Pre-Retirement Optional Settlement 2 Death Benefits~~

~~The City agrees to amend its contract with the Public Employees' Retirement System [PERS] to include the Pre-Retirement Optional Settlement 2 Death Benefits in accordance with Government Code § 21548. This benefit shall become effective the first of the month following the final amendment process and approval by PERS. The City and the BPOA understand that this contract amendment would be prospective only from the date of implementation.~~

~~Based upon actuarial information provided by PERS, in their valuation report dated January 21, 2000, the cost associated with providing the Pre-Retirement Optional Settlement 2 Death Benefit for the BPOA has been calculated at .0027% of salary. The City has current excess plan assets to cover the cost of this contract amendment. However, the BPOA agrees that the Pre-Retirement Optional Settlement 2 Death Benefit option is to be provided with the understanding that, should the City's cost of providing this benefit increase during the term of this agreement, the City has the right to reopen negotiations on payment of this .0027% cost.~~

Section 22. Retirement

22.1 The City shall continue ~~in effect~~ its contract with the Public Employees' Retirement System (PERS)~~ for the term of this Memorandum of Understanding~~.

22.2 Employees employed on or before December 31, 2010 shall receive ~~Effective November 2000, The City amended its contract with the Public Employees' Retirement System [PERS] to include~~ the retirement benefit option of 3% @ 50 in accordance with Government Code § 21362.3~~.~~ and shall have their retirement benefit calculated based on their single highest year in accordance with Government Code § 20042.

(1) Based upon actuarial information provided by PERS, in their valuation report dated January 21, 2000, the cost associated with providing the 3% @ 50 retirement benefit for the BPOA has been calculated at 4.774% of salary. The BPOA agrees that the 3% @ 50 retirement benefit option is to be provided with the understanding that, should the City's cost of providing this benefit increase during the term of this agreement, the City has the right to reopen negotiations on payment of this 4.774% cost.

(2) The City has agreed not to re-open this section for the period of~~.~~ this contract.

22.3 As soon as administratively possible, the parties agree to amend the City's contract with Public Employees Retirement System (PERS) to implement a second tier retirement benefit option of 3% @ 55 and average three year compensation formula in accordance with Government Code § 21362.3 for new hires hired on or after January 1, 2011 or hired upon effective date of the contract amendment consistent with CalPERS requirement. The employees in the second tier shall pay the entire employee share (9%) of retirement cost.

22.4 Each employee covered by this MOU shall pay all of the employee's 9% PERS contribution, and employees are able to defer state and federal income taxes on these contributions, in accordance with the City's IRC 414(h)(2) resolution.

22.5 Credit for Unused Sick Leave: Employees may convert unused sick leave to service credit in accordance with Government Code § 20965.

22.6 Military Service Credit: Employees may purchase up to four years of service credit for any action military or merchant marine service prior to employment in accordance with Government Code § 21024.

22.7 CalPERS Fourth Tier 59 Survivor Benefit: The City implemented the Fourth Tier of the 59 Survivor Benefit with PERS on November 6, 1998. The City and the BPOA agree that there is currently no employer premium for this increased benefit level. The BPOA agrees that once the City is notified that there will be an employer's premium due for this benefit, the BPOA shall commence negotiating with the City to determine the method which will be utilized to pay the premium.

22.8 Pre-Retirement Optional Settlement 2 Death Benefits: The City amended its contract with PERS to include the Pre-Retirement Optional Settlement 2 Death Benefits in accordance with Government Code § 21548. Based upon actuarial information provided by PERS, in their valuation report dated January 21, 2000, the cost associated with providing the Pre-Retirement Optional Settlement 2 Death Benefit for the BPOA has been calculated at .0027% of salary. The City has current excess plan assets to cover the cost of this contract amendment. However, the BPOA agrees that the Pre-Retirement Optional Settlement 2 Death Benefit option is to be provided with the understanding that, should the City's cost of providing this benefit increase during the term of this agreement, the City has the right to reopen negotiations on payment of this .0027% cost.

Section 23. Grievances

23.1 Definition

(1) A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding or disciplinary actions. A disciplinary appeal is an appeal by an employee of a discharge, demotion, reduction in pay or suspension without pay.

(2) A work day is defined as a day on which administrative offices of the City of Benicia are open for business.

(3) Filing Deadline: No appeal involving discharge, demotion, reduction in pay or suspension without pay will be entertained unless it is filed in writing with the Chief of Police or the City Manager, as appropriate, within ten (10) working days of the date or receipt of written notification of such disciplinary action.

(4) Conflicts of Law: Where any provisions of the Memorandum of Understanding or the City of Benicia Personnel Rules conflict with the provisions of the "Public Safety Officers Procedural Bill of Rights Act" (Government Code Sections 3300 et seq.), the provisions of the Public Safety Officers Procedural Bill of Rights Act will prevail.

(5) Disciplinary Appeal: The employee has the option of two separate Disciplinary Appeal Procedures. After completion of all pre-disciplinary procedural steps in Section 9.7 of the City of Benicia Personnel Rules, the employee may opt for a disciplinary appeal procedure pursuant to this Memorandum of Understanding or disciplinary appeal procedure pursuant to Section 10 of the City of Benicia Personnel Rules.

23.2 Procedure

Grievances shall be processed in the following manner based upon a forty (40) hour work week:

(1) The grievance shall be presented either by the employee or by an authorized Union representative to the designated supervisor of the employee

within ten (10) working days after the occurrence of the cause of such grievance.

The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and orally respond. If the grievance is not satisfactorily ~~adjusted~~ resolved 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 Chief of Police ~~or to such representative as the Chief of Police may designate~~ or his/her designee.

(2) The Chief of Police or ~~a designated representative~~ his/her designee shall have ten (10) working days from date of receipt of grievance in which to respond. If the grievance is not satisfactorily ~~adjusted~~ resolved 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 City Manager ~~or to such representative as the City Manager may designate~~ or his/her designee.

(3) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory ~~accord~~ resolution on any grievance which arises and is presented during the term of this Memorandum of Understanding, a request for hearing such grievance before an Adjustment Board shall be submitted in writing to the Personnel Officer. The Adjustment Board shall be comprised of two (2) Union representatives, no more than one (1) of who 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) or 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

(4) If an Adjustment Board is unable to arrive at a majority decision, either the Union or the City may require that the grievance 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 post hearing briefs, if any. By mutual agreement, the parties may refer the dispute to mediation with the State Mediation and Conciliation Services prior to submitting a grievance to arbitration.

(5) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

23.3 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 as set forth in Section 23.1 (1).

23.4 Change to Memorandum

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrable 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.

23.5 Compensation Complaints

All complaints involving or concerning the payment of compensation shall follow the procedure set forth beginning with section 23.2. 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.

23.6 Personnel Rules

(1) The provisions of this Section shall not abridge any rights to which an employee may be entitled under the Personnel Rules.

(2) All grievances of employees represented by the Union shall be processed under this section. If the Personnel Rules require that a differing option be available to the Employee, no action under

paragraph (3) or (4) of Section 23.2 above shall be taken unless it is determined that the employee is not availing himself or herself of such option.

(3) No action under paragraph (2) or (3) of Section 23.2 above shall be taken if action on the complaint or grievance has been taken by the Civil Service Commission, or if the complaint or grievance is pending before the Civil Service Commission.

Section 24. Officer Safety

The City agrees to provide all safety equipment as enumerated in Government Code Section 50081. The City further agrees to replace bullet-proof vests on or before the expiration of the manufacturer's warranty.

Officers shall have a minimum of eight (8) hours off between shifts. If the officer has court or other special duties which does not allow more than eight (8) hours non-work time before the next assigned shift, the officer may take vacation or comp time to make sure he/she had eight (8) hours off and then come in to the shift in progress. Another option could be to adjust the officer's shift to meet the needs of the department and the officer.

A few examples might be but are not limited to the following:

(1) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm that evening, but must be in court between the hours of 2:00 - 5:00 pm. That officer would report as normally scheduled because he/she actually had nine (9) hours of non-work time that day.

(2) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm that evening, but be in court from 10:00 am - 2:00 pm. That officer had four (4) hours non-work time in the morning and four (4) in the afternoon. Due to the fact they may not have had a sufficient amount of rest during their period of eight (8) non-work hours, if the officer wants to come in late, the supervisor could grant vacation leave or compensatory time off.

(3) An officer is off at 6:00 am and is scheduled to return to work at 6:00 pm must be in court between 9:00 am - 5:00 pm. The officer would not return to work as there had not been eight (8) hours of non-work time that day.

Section 25. Sick Leave Bank

Purpose

The City shall establish a "Sick Leave Bank" in lieu of providing State Disability Insurance for accidents or illnesses, which are not job related. The Sick Leave Bank will be for the use of those employees faced with a long-term sickness or disability, and whose personal sick leave, vacation, and compensation time have been exhausted during the course of that illness or accident. This will allow all employees, but especially newer ones with little sick leave accumulation, to enjoy additional income protection and increased peace of mind in the event of serious illness.

Policy: The initial Sick Leave Bank accumulation was created by eligible employees who donated one-half day of earned Sick Leave, which was then matched by the City.

Membership: All participating full-time regular employees or those previous full-time employees who have voluntarily reduced their work hours, shall be included in the Sick Leave Bank. Each new employee automatically is included in the bank upon successful completion of the probationary period. The Benicia Police Officers Association has agreed to participate in the Sick Leave Bank and establishes membership by each employee contributing four (4) hours of sick leave.

Benefits: All employees who have used their personal accumulated sick leave, vacation, and compensation time and who face a prolonged illness or disability as evidenced by medical certification, are eligible to make written application to the Sick Leave Bank Committee for up to thirty (30) days of sick leave from the bank. If this limit is reached and the employee is still unable to return to work, the Sick Leave Bank Committee will review any additional needs of the sick person. In any event, the maximum benefits allowed to any one person will be fifty-two (52) weeks of sick leave, or until forced disability retirement is reached, whichever comes first.

Benefits under this section shall not supplement or continue salary where the employee is on maternity or paternity leave under the Family and Medical Leave Act. The Committee will consider requests for benefits by employees in the aforementioned category only when there are documented extenuating circumstances, i.e. pregnancy, delivery or post birth complications.

Request for Sick Leave Bank Benefits: An employee shall submit a written request for Sick Leave Bank Benefits to the Chief of Police. The Chief of Police

shall recommend that the request be granted or denied prior to the request being submitted to the City Manager, or Personnel Services Manager. The request must contain: (a) information regarding the length of time needed and anticipated duration of the illness, injury, or disability; (b) doctor or medical provider written verification; and (c) provide sufficient information related to the circumstances of the particular situation which would help the Sick Leave Bank Committee with its review and decision making. Every effort will be made to maintain anonymity concerning the identity of the requesting employee. A representative of the Personnel Department, serving as a non-voting member of the Committee, will provide the Sick Leave Bank Committee with a summary of the employee's request and an overview of past leave history.

Sick Leave Bank Committee: The Sick Leave Bank Committee shall be comprised of one (1) department head, one employee from the unrepresented units, three (3) union bargaining unit employees and the Personnel Services Manager as a non-voting member of the committee. The City Manager or his/her designated representative shall appoint members of the committee on an ad-hoc basis. The purpose of the Committee is to decide the appropriateness of a request by an applicant to the Sick Leave Bank and recommend to the City Manager or his/her designee an appropriate course of action to take. The Committee will base its recommendations on the applicant's previous sick leave record, evidence of disability as certified by a proper medical authority, and the number of additional Sick Leave Bank days previously extended to the applicant. The action of the City Manager or his/her designee will be final.

Sick Leave Payback: Any employee who has used sick leave bank days shall be required to pay them back in the form of earned sick leave days. The payback rate will be one (1) sick leave day for every five (15) days granted. This payback is to be pro-rated if more or a lesser amount of days are granted. Sick leave shall be taken from employees earned sick leave as follows: Sick leave shall be paid back at the rate of one-half (1/2) of their accrued sick leave earned until such time that all days are repaid. During any time an employee owes time to the sick leave bank, he/she shall not be entitled to the City's sick leave incentive program (reimbursement of 25% of an employees accrued, but unused, sick leave). The annual 25% sick leave incentive shall be suspended for 2010.

If an employee is injured outside of work by an insured third party and the employee returns to work with the City, the City may exercise its lien rights with all applicable laws relating to this issue.

Section 26 Vantage Care Retirement Health Savings:

Effective January 1, 2007, association members agreed to participate in the ICMA VantageCare retiree health savings program. The City agrees to contribute 2% of basic salary for each enrolled ICMA VantageCare employee. This provision is suspended for the period of December 1, 2010 through June 30, 2011, and no City contributions shall be made during that time.

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.

Section 27. Closing Clause

26.1 The effective date of this agreement shall be July 1, 20~~06~~10 and the agreement shall remain in effect through June 30, 20~~010~~12.

26.2 This agreement shall remain in force after its expiration where negotiations between the employer and the BPOA have not resulted in a new agreement, until such time as a new agreement is reached by both parties.

26.3 Any provisions in this agreement pertaining to work hours, shifts, or personnel assignments may be suspended temporarily by the City where a declared emergency exists as defined by the Civil Disaster Emergency Plan. The City shall have sole power to determine the existence of an emergency and shall meet with the BPOA at the earliest possible time to discuss the suspension of provisions during the declared emergency.

26.4 If any section of this Agreement 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 agreement shall remain in full force and effect for the duration of this Agreement. In the event of invalidation of any Section, the City and the BPOA agree to meet within thirty (30) days for the purpose of renegotiating said Section.

26.5 This Memorandum of Understanding shall be submitted to the City Council for its adoption at its regular meeting.

26.6 Reopener for financial uncertainty: 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 as needed to prevent layoffs of currently funded BPOA members. The City recognizes the BPOA's desire that, in the event that concessions are necessary, the City would consider pre tax concessions first. The City would make a good faith effort to do so. If the parties are unable to come to an agreement through the meet and confer process then the City shall be able to impose concessions for fiscal year 2011 – 2012. Nothing herein prohibits the City from laying off employees during the duration of this agreement.

In WITNESS WHEREOF, the parties hereto have executed this Agreement this_____ day of_____, 20~~07~~12.

BENICIA POLICE OFFICERS ASSOCIATION

By_____

By_____

By _____

By_____

CITY OF BENICIA

By_____

By

By

Approved as to form:

City Attorney

VIII.B.88

AGENDA ITEM
CITY COUNCIL MEETING DATE - DECEMBER 16, 2010
ACTION ITEMS

DATE : December 13, 2010

TO : City Council

FROM : City Attorney

SUBJECT : **REQUEST TO SOLICIT PROPOSALS FOR THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT AND TO HIRE A CONSULTANT TO ASSIST WITH THE PROCESS**

RECOMMENDATION:
Authorize the hiring of a consultant to assist with the Request for Proposals for a new franchise agreement for garbage and related services and authorize the issuance of the Request for Proposals.

EXECUTIVE SUMMARY:
Unfortunately, the negotiations with Allied Waste for an extension of the Franchise Agreement for garbage services have broken down. Because the contract expires next year, the process to hire a new solid waste collector needs to begin as soon as possible. To assist in that process an expert in the field of solid waste and negotiations of franchises is required. Proposals have been solicited for the expert services.

GENERAL PLAN:
Relevant General Plan Goals and Policies include:

- Goal 2.4.2: Enhance the recycling of solid waste
  - Policy 2.42.1: Strive to accomplish the mandated objectives of the California Integrated Waste Management Act
- Goal 4.16: Require hazardous materials and hazardous waste management handling and disposal procedures that are protective of human health and the environment
  - Policy 4.16.1: Support Solano County Hazardous Waste Management Plan and it's goals, policies and implementation guidelines for hazardous waste reduction, hazardous waste facility siting, hazardous waste handling and disposal, public education and involvement, and program coordination with regulatory requirements
  - Policy 4.16.2: Continue, promote and expand the City's Household Hazardous Waste Program

- Goal 4.16: Reduce health and safety hazards associated with hazardous materials users, hazardous waste generators, and hazardous waste disposal sites and toxic air contaminants

STRATEGIC PLAN:
Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community Health and Safety
- Goal 4.00: Preserves and Enhance City Assets and Infrastructure

Relevant Benicia Climate Action Plan Strategies:

- Objective SW-1: Commit to a Waste Diversion Goal of 90% for City Government Operations
- Objective SW-2: Commit to Waste Diversion Goal of 75% for the Community
- Strategy T-8.1.1. Encourage local businesses to Use Alternative Fuel Vehicles

BUDGET INFORMATION:
It is anticipated that a new franchise agreement will bring additional revenue to the city in the form of increased franchise fees and other fees. It is estimated that the cost for a consultant will be approximately up to $80,000. This cost may be recouped as part of the franchise agreement. Since this is not a budgeted item, a budget adjustment is required.

BACKGROUND:
The City of Benicia currently has a franchise agreement with Allied Waste Systems, Inc. (Allied) for the collection, transfer, transportation and disposal of solid waste, recyclables and other related services through February 28, 2012. As part of the direction given to staff at its January 6, 2009 meeting, the City Council considered the need for a state-of-the-art agreement that will allow the City to negotiate with its existing franchisee or go out to bid. Since then a consultant, R3 was hired to assist in the process, a survey of the residents and businesses has been done, a comparison of neighboring jurisdictions has been completed, and a "model" agreement is being drafted. In order to increase the opportunity for public input and because several of the proposed items are within the purview of the Sustainability Commission, proposals for service improvements were presented to the Commission at their July 18, 2010 meeting.

Despite a number of negotiating sessions, we have been unable to reach an agreement with Allied. Because of the ramp up time needed if a new contractor is selected, it is recommended that the Council authorize the

issuance of a Request for Proposals ("RFP") for solid waste, recycling, green waste and related services.

In order to draft the RFP, review the proposals and draft the agreement, the assistance of an expert is required. Staff solicited proposals from two firms: R3 Consulting and HfH Consultants. Both firms are well qualified to assist in this process. The proposals of both firms are attached.

Because the process was fairly well along with Allied, we have the model agreement to work from. We should be able to add additional services such as weekly residential recycling as options for the RFP. This may help in deciding whether weekly residential recycling is worth the cost. The model terms presented to the Sustainability Commission are attached for your information. It does not represent exactly where the City and Allied were with the negotiations.

OPTION:
Although time is running out to get a Request for Proposals issued and reviewed and a contract for the franchise issued, the City Council could direct the subcommittee to see if Allied is interested in negotiating a bit more. One advantage of this would be that a contract extension fee of some amount would still be an option. It may be that there is room to negotiate on some of the other terms such as the franchise fee and the pass through any fees.

Attachments:

- Solid Waste HfH Proposal Letter
- Solid Waste R3 Procurement Proposal to Benicia
- Solid Waste Model Terms

X.A.4

R3 Consulting Group, Inc.
Resources Responsibility Respect

R3 Consulting Group, Inc.
4811 Chippendale Drive, Suite 708
Sacramento, CA 95841
Tel. 916-576-0306
Fax: 916-331-9600
www.r3cgi.com

December 13, 2010

Ms. Heather McLaughlin, City Attorney
City of Benicia
250 L Street
Benicia, CA 94510

Subject: City of Benicia Solid Waste Franchise Procurement Services

Ms. McLaughlin:

R3 Consulting Group (R3) is pleased to submit the attached Scope of Services, list of deliverables, schedule and budget to the City of Benicia (City) to conduct a competitive procurement process for Solid Waste Collection Services. Our recent work for the City during the negotiation process with Allied Waste has provided R3 with a unique insight into the City's programs, policies, financial requirements and customer needs and will allow R3 to be able to prepare a complete RFP Package including a Franchise Agreement for City Council approval on January 18, 2011. Accordingly, we are prepared to start on December 17, 2010.

A late January RFP release would allow adequate time for prospective contractors to prepare proposals, the City's evaluation team to conduct a thorough evaluation process, and the City Council to award a new Franchise Agreement in July 2011 for a new service start date of March 1, 2012. This schedule will provide for approximately 6 months transition time prior to start of new services to allow for equipment to be ordered and received, outreach materials to be prepared and distributed, community workshops to be conducted, commercial waste audits to be conducted, customers to select/confirm cart sizes, bin sizes and collection frequency, and customer accounts to be established.

The guiding principle of R3 on this project will be to work on behalf of the City to obtain the Best Program at the Best Price. To that end, R3 will work to conduct a competitive procurement process that effectively meets the needs of the City, its residents and businesses. In addition, our founding corporate policy, to work only for municipalities and not for private sector waste management companies, allows us to work on your behalf without any conflicts or constraints.

We appreciate the opportunity to submit this proposal to the City. Please feel free to contact me at (916) 576-0306, or e-mail at rterwin@r3cgi.com, if you have any questions or comments regarding our proposal.

Sincerely,

R3 CONSULTING GROUP

Richard Tagore-Erwin
Principal

Related Experience

R3 team members have provided extensive Request for Proposal (RFP) procurement and negotiation experience for the following communities.

- Alameda County Waste Management Authority, CA
- Amador County, CA
- Benicia, CA
- Bradbury, CA
- Brevard County, FL
- Burbank Sanitary District, CA
- Calabasas, CA
- Castro Valley Sanitary District, CA
- Citrus Heights, CA
- Cooper City, FL
- Dania Beach, FL
- Deerfield, FL
- Douglas County, NV
- Duarte, CA
- Dublin, CA
- El Cerrito, CA
- El Dorado County, CA
- Elk Grove, CA
- Emeryville, CA
- Fort Collins, CO
- Humboldt County, CA
- Irwindale, CA
- Kansas City, MO
- La Quinta, CA
- Lake County, FL
- Lake Forest, CA
- Lawndale, CA
- Livermore, CA
- Lomita, CA
- Los Altos, CA
- Lubbock, TX
- Martin County, FL
- Merced County, CA
- Monrovia, CA
- Montebello, CA
- Monterey County, CA
- Novato Sanitary District, CA
- Palm Beach County, FL
- Phoenix, AZ
- Piedmont, CA
- Placer County, CA
- Rancho Cordova, CA
- Rancho Murieta, CA
- Rancho Palos Verdes, CA
- Redlands, CA
- Rohnert Park, CA
- Rolling Hills Estate, CA
- Sacramento County, CA
- Sacramento, CA
- Salinas, CA
- San Bernardino, CA
- San Gabriel, CA
- San Jose, CA
- San Ramon, CA
- Santa Barbara, CA
- Santa Barbara County, CA
- Santa Rosa, CA
- Seminole County, FL
- South Bayside WMA, CA
- State of California
- Tucson, AZ
- Upland, CA
- Windsor, CA
- Windsor, CO
- Winters, CA
- Yuba Sutter RWM

Scope of Services

PROJECT APPROACH

Our project approach is designed to result in a successful competitive procurement and contractor selection within the City's requested time schedule. R3 understands that the City has limited staff resources for the completion of this important project. Therefore, we propose to provide "***full service***" procurement and solid waste consulting assistance. The R3 project team has assisted numerous cities and counties on similar projects with similar staffing levels and time constraints, and we are prepared to work closely with City staff and the Subcommittee[1] to complete all required tasks, including drafting of the entire Request for Proposals (RFP) package, assisting in the evaluation process, and making City Council presentations.

Our proposed scope of services is designed to allow R3 to act as an extension of City staff and assist in the following aspects of this procurement project:

- Meeting with City staff and the Subcommittee to confirm the program requirements;
- Compiling the RFP Package, including drafting of the program requirements, the Franchise Agreement, the evaluation criteria and pricing forms;
- Developing a mailing list of potential proposers;
- Conducting a pre-proposal conference with potential proposers;
- Preparing written responses to questions submitted regarding the RFP, and preparing addenda as necessary;
- Conducting interviews with proposers;
- Assisting in the evaluation of responses from proposers;
- Assisting City staff with the presentation of the results of the evaluation process and staff recommendation to the City Council;
- Conducting clarification or negotiation sessions if necessary;
- Preparing Evaluation Binders for City staff/Evaluation Team Members;
- Finalizing the Franchise Agreement; and
- Assisting City staff with staff reports, memorandums, and presentation materials for City Council.

The R3 project team has successfully completed numerous competitive procurement projects for municipal solid waste services, and we are confident that the project schedule will be met if no unforeseen issues or obstacles arise.

[1] R3 is assuming that the City Council Subcommittee will participate as a member of the City's Evaluation Team.

WORK TASKS

Task 1: Confirm Requested Franchised Services

R3 will work with City staff and the Subcommittee to confirm the best combination of solid waste collection and recycling programs for residential, commercial, and industrial customers, and those services to be provided to the City and/or public schools. The starting point for confirmation will be those programs and requirements as included in the Franchise Agreement and discussions with City staff and the Subcommittee used in the prior negotiation process with Allied, and will include, but not be limited to, the following:

- Rate structures for residential garbage collection to promote recycling and green waste diversion;
- Bundled rates and equal capacity recycling for commercial customers;
- Collection frequency for trash, recyclables, and organics;
- Container requirements, including sizes, colors, footprint, manufacturing specifications, labeling requirements, timing for replacement, repair or exchange;
- Minimum waste diversion requirements and phasing of diversion requirements;
- Linkage to the City's Climate Action Plan;
- Financial incentives for the franchisee to increase recycling and / or penalties for failure to meet specified diversion requirements;
- Waste reduction, recycling and education programs and strategies;
- Specific list of acceptable recyclables and organics (food waste, and/or green waste) to be included in diversion programs;
- Household Hazardous Waste, E-Waste and U-Waste collection, pharmaceuticals;
- Use of CNG/LNG or "clean diesel" for collection vehicles;
- Public education program requirements (e.g., quarterly newsletter, annual campaigns, classroom presentations, etc.);
- Time requirements for responses to customer calls regarding service complaints (i.e., missed collections, material spillage, hydraulic leaks, etc.);
- Time requirements for responses to customer calls regarding billing complaints, new accounts, etc.;
- Time requirements for cart or bin exchanges;
- Vehicle maintenance and replacement requirements;
- Minimum insurance coverage requirements;
- Franchise fee percentages, road impact fees, or other City required fees to be paid by the hauler;
- Evaluation team members (City staff, consultant, City Council Subcommittee) and proposal evaluation and selection process (also see Task 3); and

R3

- Process Integrity Rules/Communication Protocol for the RFP process to ensure the integrity of the RFP process.

R3 will prepare a memorandum summarizing the programs and options and seek conformation from City staff and Subcommittee. The final program choices will be included in the RFP Package (Task 3).

Task 2: Prepare, and Issue the Request for Proposals (RFP)

2.1 Develop Request for Proposals Document

R3 will prepare an RFP Package based on information generated from Task 1, as well as our experiences working with the solid waste community in Northern California. The RFP will include a Draft Franchise Agreement, which will specify the conditions of the franchise (e.g., collection service requirements, performance standards, insurance, and liability/indemnification requirements), and price forms for proposers to complete. The RFP will specify minimum requirements and qualifications and will require proposers to submit work plans that specify how they will transition to new services, achieve diversion requirements, implement customer service programs, and promote public education activities. Separate sections of the RFP may include, for example:

Section 1: General introduction to the RFP documents;

Section 2: Available demographic and service account data;

Section 3: Current services and requested service requirements;

Section 4: Communication protocol for the proposers and the City, qualification requirements; required technical approach and work plans, insurance and bond requirements, schedule, and the required proposals submittal format;

Section 5: Evaluation criteria and evaluation process;

Section 6: Proposal price and service forms; and

Section 7: Draft Franchise Agreement.

In our experience, the Franchise Agreement should be developed and issued as part of the RFP Package. This significantly reduces the time and cost of negotiations, and contractually links the requested services to proposed prices as part of the evaluation process.

Accordingly, R3 will prepare the Draft Franchise Agreement to be included in the RFP Package. The Draft Franchise Agreement will be based on the prior agreement prepared as part of the negotiation process with Allied. The Draft Franchise Agreement is structured to incorporate any potential options. Proposers will be required to specify any exceptions and provide language for any changes they propose as part of their proposal package:

- Definitions;
- Franchise term;
- Exclusivity and exemptions;
- Scope of services;

- Diversion requirements and AB 939 indemnification;
- Compensation (customer rates) and rate adjustment process and formula;
- Franchise fees, road impact fees, other fees to be paid to the City;
- Operating equipment;
- General requirements;
- Operating and financial record-keeping and reporting requirements;
- Indemnity, insurance, and bond;
- Performance standards;
- Liquidated damages;
- Breach, default, and remedies;
- Transition to future contractor;
- Exhibits:
    - Customer rate sheets;
    - Facilities to be used;
    - Approved subcontractors;
    - Street sweeping schedule and locations
    - List of exempt green waste collection locations;
    - List of services to be provided to City's parks, offices and facilities, green waste drop-off bins/compactors, and public schools located within the City;
    - List of community events/sponsorships;
    - Equipment specifications (vehicles and containers); and
    - Work Plans (community outreach, transition, diversion, operations, HHW).

The Draft Franchise Agreement will establish the scope of services to be provided by the contractor and will specify performance standards. Based on the results of discussions in Task 1, the Draft Franchise Agreement and price forms included in the RFP Package will be structured to allow the City to evaluate price proposals for various service options, such as, weekly vs. every-other week collection of residential organics, including food waste as part of the residential yard waste program.

R3 will prepare draft staff reports and presentation materials, and attend one (1) City Council meeting to present the details of the draft RFP for discussion and approval prior to release.

2.2 Finalize & Issue RFP

R3 will finalize the RFP and provide the City with one (1) electronic copy and five (5) copies in three-ring binders.

R3 has an extensive list of solid waste companies operating in California. R3 will provide the mailing list to the City in electronic format, or produce mailing labels as requested. R3 will also work with the City to publicize the availability of the RFP Package, and if requested will provide the City with a draft notice of the availability for release on City letterhead.

2.3 Conduct Mandatory Pre-Proposal Meeting and Prepare RFP Addenda

R3 will conduct a mandatory pre-proposal meeting with prospective proposers. The pre-proposal meeting will provide the opportunity for the City to review the RFP with prospective proposers and answer questions as appropriate. R3 will prepare written responses to questions raised before and during the pre-proposal meeting for submittal to all parties at the meeting. In addition, R3 will prepare addenda to the RFP as necessary.

Task 3 Evaluate Proposals and Present Results

3.1 Evaluation Process

R3 will assist the City with the evaluation of proposals received in response to the RFP. The evaluation will include, but not be limited to, conducting an initial "pass-fail" checklist against RFP minimum requirements, evaluating the proposers' qualifications and references, processing and disposal facilities, approach to meeting the City's diversion requirements, customer rates (prices), collection methods, customer service programs, financial statements, transition experience and work plans.

After the initial evaluation is completed, R3 will also prepare any written request for clarification to the haulers, as necessary. In the event a proposal does not meet the minimum requirements of the RFP, R3 will recommend that the proposal be disqualified as non-compliant with the RFP requirements.

R3's role in the evaluation process will also include facilitating the evaluation meetings, and the proposer interviews, along with several meetings with City staff, the Subcommittee, and presentations to the City Council to present the following: 1) a summary of the proposals received, and 2) the results of the evaluation process.

While there are many approaches that can be used to evaluate and select a hauler (staff/consultant evaluation and recommendation report, community members as part of he evaluation team), R3 has described a "double-blind" process to complete the evaluation and selection process to ensure the process is fair to both the City and the proposers and allows involvement by the City Council in the evolution process itself—not just at the point of award. ***Please note that R3 would be happy to use an alternative evaluation approach as directed by the City***.

<u>Step 1 – Raw Scoring By Evaluation Team</u>: As a first step in the double-blind process, R3 will provide scoring instructions and tables to members of the Evaluation Team (City staff, consultant, Subcommittee) with the following six (6) evaluation criteria (suggested):

- Overall responsiveness to the RFP;
- Proposers' experience and references;
- Technical approach;
- Diversion programs;

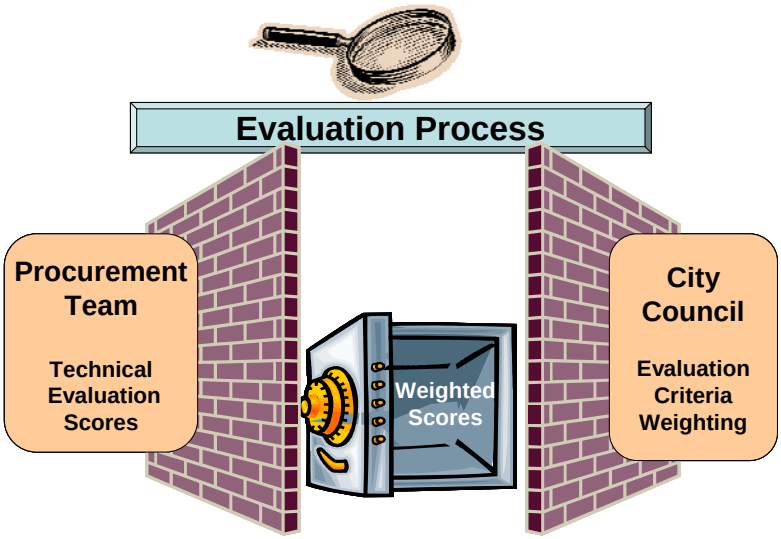
- Financial stability; and
- Proposed customer rates (prices).

After the evaluation committee has completed the evaluation process, the raw scores will be sealed and given to the City Clerk.

Step 2 – Average Weighting Factors from City Council: R3 will then make a presentation to the City Council[2] on the six (6) evaluation criteria, and the Council members will individually assign weights to each criterion. The Council members will not see the raw scores before individually assigning weighting factors to the six criteria. The City Council weights will then be averaged to determine the weighting factors for the six (6) criteria.

Step 3 – Weighted Scores and Overall Ranking: The average weighting factors from the City Council will be applied to the raw scores in order to calculate the weighted scoring results for each proposal. The weighted results will then be presented to the City Council and this will form the basis of how proposers are ranked.

FIGURE 1
Double-Blind Process Evaluation



3.2 Present Evaluation Results to City Council

R3 will prepare a staff report detailing the results of the evaluation process, recommendations for agreement award, and items to be clarified and/or negotiated with the recommended proposer. R3 will also present the results of the evaluation process to City Council for their discussion and direction.

[2] Note that if City Council Members are also a member of the Evaluation Team, they should not participate in the evaluation criteria weighting because they will have been directly involved in the technical evaluation of proposals.

Task 4: Finalize Franchise Agreement for City Council Approval

R3 will participate in finalizing the Franchise Agreement top ranked/recommended proposer as directed by City Council. Finalizing the Franchise Agreement will focus on incorporating the proposer's service and price proposals, work plans (diversion plan, transition plan, operations plan, etc.), equipment specifications (vehicles and containers), and finalizing the contractual language. R3 will assist City staff in developing the City Council presentation and will attend City Council meetings to discuss the final recommendations and Franchise Agreement.

R3 will assist in preparing the staff report detailing the results of the evaluation process, recommendations for agreement award, and items to be clarified and/or negotiated with the recommended proposer.

Deliverables

Tasks 1-4 include the following deliverables:

- Preparing a summary of requested services for review/confirmation with the Subcommittee (Task 1);
- Preparing an RFP Package for distribution to prospective haulers that includes a background of the service area, requested services, RFP preparation instructions, evaluation and selection criteria, project schedule, Draft Franchise Agreement, and all required cost and supporting forms to be filled out by the proposers;
- Drafting a Franchise Agreement (based on prior draft from negotiation process);
- Providing process rules to guide the RFP process (e.g., how the proposers may communicate with City staff, the consultant, and the City Council);
- Preparing a mailing list of prospective proposers;
- Preparing a notice of availability of the RFP document and how proposers may obtain copies;
- Conducting a pre-proposal meeting;
- Preparing written responses to questions submitted before and during the pre-proposal meeting;
- Preparing addenda to the RFP, as required;
- Scheduling and conducting interviews with the proposers;
- Preparing any written request for clarification to the proposers, as necessary;
- Assisting the City with the evaluation of the technical feasibility of each proposal;
- Preparing an evaluation matrix to easily compare the proposed programs and rates for each proposer;
- Assisting in the preparation of a staff report and presentation that summarizes the evaluation criteria (if the City Council elects to adopt the "double blind" evaluation process);

- Assisting in the preparation of staff reports that summarize the proposals, results of the evaluation process, and recommendations;
- Participating in six (6) meetings/teleconferences with City staff;
- Participating in six (6) meetings with the Evaluation Team/Subcommittee as follows, unless otherwise directed:
    - One (1) meeting to discuss/conform program requirements (Task 1);
    - One (1) meeting to discuss/present the draft RFP Package prior to City Council release (Task 2);
    - Three (3) meetings to discuss/present evaluation of proposals (Task 3); and
    - One (1) meeting to discuss/present the Final Franchise Agreement prior City Council action/award (Task 3).
- Participating in four (4) presentations to City Council as follows, unless otherwise directed:
    - One (1) meeting to present the draft RFP Package for City Council approval;
    - One (1) meeting to present the evaluation process and to have City Council establish the weighting of the evaluation criteria;
    - One (1) meeting to present the results of the evaluation process, including a numerical ranking of the proposals; and
    - One (1) meeting to present the Final Franchise Agreement for City Council action/award.

Schedule

R3 has developed the following schedule to demonstrate the time needed to complete the major milestones in the RFP process. For purposes of this schedule, we have assumed that we would receive notice to proceed on December 17, 2010.

TABLE 1
City of Benicia Collection Services RFP Schedule — Major Milestones

TASK/ITEM	DATE
Meeting with Evaluation Team	January 3, 2011
Complete draft RFP Package	January 13, 2011
Present draft RFP Package to City Council	January 18, 2011
RFP Released	January 24, 2011
Mandatory Pre-Proposal Conference	February 17, 2011
Issue RFP Addenda as Necessary	February 24, 2011
Proposals Due	March 21, 2011
Interview Qualified Proposers	April 5, 2011
Issue Proposal Clarification as Necessary	April 12, 2011
Evaluation Team Completes Technical Evaluation	April 28, 2011

TABLE 1 City of Benicia Collection Services RFP Schedule — Major Milestones	
TASK/ITEM	**DATE**
City Council Establishes Weighting for Evaluation Criteria	May 3, 2011
Present Results and Recommendations to City Council	May 17, 2011
Prepare Final Franchise Agreement	June 27, 2011
Present Final Franchise Agreement and Recommended Hauler for City Council Action	July 5 or 19, 2011
Contractor Pre-Service Start Date Transition	August 2011-February 2012
Begin New Collection Services	March 1, 2012

Project Budget

R3 has developed the budget (Table 2) to support this Scope of Services and deliverables. We propose to complete our proposed work scope on a time-and-materials basis for a not-to-exceed budget of $51,800, including all expenses. ***Also, please note that we suggest that the company that is awarded the new Franchise Agreement be required to reimburse the City for the cost of the procurement process.***

TABLE 2 City of Benicia – Collection Services RFP Budget		
Task	**Hours**	**Cost** (includes expenses)
Task 1: Confirm Requested Services	14	$1,970
Task 2: Develop RFP Package	44	$6,260
Task 3: Evaluate Proposals and Present Results	256	$38,800
Task 4: Finalize Franchise Agreement for City Council Approval	30	$4,770
Total Project Cost	344	$51,800.00

Billing Rates January 1, 2009 –December 31, 2009		
Project Team Member	**Classification**	**Hourly Rate**
Richard Tagore- Erwin, Ric Hutchinson	Principal	$175.00
Carrie Baxter	Associate II	$125.00
Jared Zitron, Melody Lassister	Associate I	$100.00

Reimbursable Expenses	
Travel and meals, delivery and other expenses	Cost
Travel – Private or company car	$0.51 per mile, or as adjusted by the IRS

Payments

Unless otherwise agreed in writing, fees will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the date of the invoice.

X.A.16

The "model" agreement would give a company the exclusive franchise and contract for the collection, transportation, processing, recycling and disposal of all garbage generated in the City, subject only to certain exceptions contacted in the Benicia Municipal Code (e.g., petroleum refinery, schools).

	Current Service	**In Current Franchise Agreement**	**"Model" Agreement**
Term	October 1, 2001 – February 28, 2012	yes	July 1, 2011 – June 30, 2020 2, 5-year extensions if diversion and service requirements are met
Hours and Days of Collection	Collection in residential areas between hours of 6am-7pm	yes	Collection in residential areas between hours of 6am-7pm Monday through Friday with no service on Saturday, except for holiday service Collection in commercial areas between hours of 4am-7pm Monday through Friday and Saturday from 4am-4pm
Carts and Bins Replacement	Not specified	no	Within 3 working days Replace: 1 free garbage cart or bin, 1 free recycling cart or bin, 1 free organic waste cart or bin during the life of the agreement
Carts and Bins Exchange	Not specified	no	Within 3 working days Replace: 1 free garbage cart or bin, 1 free recycling cart or bin, 1 free organic waste cart or bin per agreement year
Rate Increase	CPI or 5 % whichever is less	yes	RRI (collection element, disposal element, organic processing element, and franchise fee element)
Other Fees	Franchise Fee ($145,000 due 1/1/10 with annual increase of	yes	Franchise Fee 7% of Gross Receipt collected each month

	Current Service	In Current Franchise Agreement	"Model" Agreement
	$5,000), approximately 2.75% of $5.236 million		increase 2% annually for five years (15% by 2014), minimum fee $150,000 increased by 5,000 annually starting 7/1/2011
		no	Solid Waste Fund Administrative Fee $XXX,XXX / year adjusted by Collection Element
		no	Vehicle Impact Fee $XXX,XXX / year adjusted by Collection Element
		no	Franchise Extension Fee $XXX,XXX / year for 3 years upon execution of extension of the Agreement (if current provider retained)
		no	Development Fee one time fee of $XXX,XXX

	Current Service	In Current Franchise Agreement	"Model" Agreement
Residential Services	Weekly garbage collection	yes	Weekly garbage collection
	Bi-weekly green waste collection	improved	Bi-weekly organic waste collection, green waste collection including new limited food waste collection (including food contaminated paper products, fruits and vegetables)
	Bi-weekly recycled waste collection	improved	Weekly recycled waste collection
	Curbside collection of used motor oil and filters (Maximum 3 gallons per pickup) Every Sat. 9-12 residential drop-off of hazardous materials at the Corporation Yard (batteries, fluorescent bulbs, latex paint, antifreeze, mercury thermometers, car batteries, oil, filters) Two free on-call collections for unlimited quantity of extra containerized yard waste/cardboard One free on-call collection for up to 2-CY of extra garbage (not including bulky items such as furniture, appliances, etc.) On-call bulky waste and electronic waste collection (for a fee)	improved	Curbside HHW collection, Contractor to provide containers (batteries, used motor oil, filters, compact florescent light bulbs) On-Call HHW collection (cleaning products, pesticides, herbicides, painting supplies, Sharps, U-Waste, etc.) Two annual residential drop-offs of hazardous materials at the Corporation Yard Extra recycling and/or organic waste carts as need for no additional cost Three free on-call large item collections per year (up to 4 CY / collection (containerized waste including electronic waste) and up to 3 individual bulky items such as couch, water heater, etc. per year)

	Current Service	In Current Franchise Agreement	"Model" Agreement
Other Residential Services	Holiday tree chipping fundraiser with Boy Scouts	yes	Holiday tree chipping fundraiser with Boy Scouts
		no	Compost give aways 2/year
	Sharps collection program provided by Allied Pedrotti collects batteries and fluorescent tubes. Allied picks up material at Pedrotti's, takes it to the disposal facility and pays for disposal. Partnered with Pedrotti's for 2010 Earth Day compost give away	no	Sharps collection included as part of on-call HHW collection for a fee. Batteries and fluorescent tubes are collected as part of the Curbside HHW Collection at no additional cost. Two compost give aways per year
Multi-Family Services	Weekly garbage collection Bi-weekly recycled waste collection On-call bulky waste collection (for a fee)	yes	Same as Commercial with the following exceptions: Bi-weekly organic waste collection, green waste collection including new limited food waste collection (including food contaminated paper products, fruits and vegetables) Recycling Tote Bags Large Item Collection (for a fee)
Commercial Services	Weekly garbage collection Subscription recyclables collection (for an additional fee) Unregulated rates	yes	Weekly garbage collection Free weekly recycling collection Additional carts or bins for no additional cost Weekly organic waste collection (for a reduced fee) including new food waste collection (including meat, fish and diary, food

	Current Service	In Current Franchise Agreement	"Model" Agreement
			contaminated paper products, fruits and vegetables)
City Collection Services	Collection at City facilities without reimbursement from City 3 debris boxes at Corporation Yard Roll-off/Debris box service at special clean-up events free of charge Free recycling to schools (if school district contracts with Contractor to provide solid waste collection)	yes	Collection at City facilities without reimbursement from City 3 debris boxes at Corporation Yard Roll-off/Debris box service at special clean-up events free of charge Free recycling to schools School diversion discount School recycling program Compost delivery up to 360 CY
Diversion Requirements	Best efforts to help City attain its AB 939 goals	yes	65% by December 31, 2012
Contractor's Office	Local office open to residents for bill pay Toll-free phone number to customer service department	yes	Local office open to residents for bill pay Toll-free phone number to customer service department Multilingual/TDD service Develop and maintain a state-of-the-art website
Other Services	Not specified	no	Public Outreach and Education Services Recycling Coordinator Annual Collection Service Notice
Collection Vehicles	Clean trucks weekly	Yes	Clean trucks weekly

	Current Service	In Current Franchise Agreement	"Model" Agreement
	Uniform in color, neatly painted Contractor's name on side of each truck Leak proof and completely enclose all solid waste collected	 improved	Repaint vehicles as necessary Contractor's name, customer service telephone number, and number of vehicle on each side and rear of each truck Leak proof and completely enclose all solid waste collected All vehicles equipped with GPS Safety equipment (highway lighting, flashing and warning lights, clearance lights, warning flags and back-up warning devices) Clean air vehicles CNG or LNG fuel Vehicle noise level must comply with U.S. EPA noise emission regulations Size limitations – SFD Residential Collection vehicles not exceed 18,000 lbs/axel, must not exceed 52,000 GVWR
Record Keeping & Reporting Requirements	Maintain full and complete accounting records of all service performed Annual profit and loss statement no later than 4 months after close of its fiscal year	yes	Maintain all records for a period of 5 years following the close of each the Contractor's fiscal years Maintain full and complete accounting records of all service performed Maintain records of all payments made to the City

	Current Service	In Current Franchise Agreement	"Model" Agreement
			Maintain tonnage records Monthly, Quarterly and Annual Reports
Liquidated Damages	Not specified	no	Procedure for assessment and review of liquidated damages Reasonable estimates of the amount of such damages
Billing Audit and Performance Reviews	Not specified	no	One billing audit and performance review for each 5 years during the term of Agreement Purpose to verify calculation of billing rates, franchise fees, and other fees, compliance with reporting requirements and performance standards, and reported diversion percentages
Performance Bond	$50,000 (increased by CPI or 5% annually, whichever is lower)	yes	$500,000
Transition to Next Contractor	Not specified	no	Cooperate fully with City and any subsequent contractors to assure a smooth transition of services
Insurance: Worker's Compensation Employer's Liability Comprehensive General Liability & Property Comprehensive Auto Liability	Bodily Injury $500,000 Property Damage $500,000 Bodily Injury $1,000,000 each person $1,000,000 each occurrence $5,000,000 combined single limit Property Damage $2,000,000 Aggregate Bodily Injury $1,000,000 each person $1,000,000 each occurrence $5,000,000 combined single	yes	$3,000,000 per accident $10,000,000 combined single limit per accident for bodily injury, personal injury and property damage Bodily Injury $10,000,000 combined single limit Property Damage $10,000,000 each accident

	Current Service	In Current Franchise Agreement	"Model" Agreement
	limit Property Damage $1,000,000 each accident		
Business Auto Policy	Bodily Injury $1,000,000 each person $1,000,000 each occurrence $5,000,000 combined single limit Property Damage $1,000,000 each accident		Not specified
Employee Blanket Fidelity Bond (covering dishonesty, forgery, alteration, theft, disappearance, destruction)	Not specified		$500,000 per employee
Hazardous Waste and Environmental Impairment Liability	Not specified		$3,000,000 each occurrence $10,000,000 aggregate

AGENDA ITEM
CITY COUNCIL MEETING DATE - DECEMBER 16, 2010
ACTION ITEMS

DATE : December 13, 2010

TO : City Council

FROM : City Attorney

SUBJECT : **REPORT FROM THE ARSENAL SUBCOMMITTEE AND RECOMMENDATION FOR AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT TO ENVIRONMENTAL RISK SERVICES ("ERS")**

RECOMMENDATION:
(1) Adopt the Resolution approving an agreement with ERS Corporation for consulting services for the Benicia Arsenal investigation and potential cleanup project and authorizing the City Manager to sign the contract on behalf of the City; and
(2) Place a standing item on the Council's agenda for a report on the Arsenal.

EXECUTIVE SUMMARY:
With the recent notification from the state Department of Toxic Substances Control that further investigation and remediation is needed for the Benicia Arsenal, the City issued a Request for Qualifications from legal and technical firms to provide the City support on the project. After interviewing the 7 finalists, the team headed by ERS emerged as the group best suited for the City's needs on the Arsenal Project. The Council Subcommittee recommends that an initial agreement be awarded to the team with a not to exceed of $10,000 for out of pocket expenses.

BUDGET INFORMATION:
There are sufficient funds to cover the $10,000 for expenses in the City Attorney's budget. It is anticipated that some or all of this may be reimbursed at a future date.

GENERAL PLAN:
Relevant General Plan Goals and Policies include:

- Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life
- Goal 4.7: Ensure that existing and future neighborhoods are safe from risks to public health that could result from exposure to hazardous materials.
  - Policy 4.7.3: Protect existing and future development from contaminated sites, hazardous landfill waste and debris, chemical spills, and other hazards including unexploded ordnance and explosive waste.
  - Policy 4.7.5: Require that all sites known or suspected to have unexploded ordnance and/or a toxic history be tested and remediated before any development can occur.

STRATEGIC PLAN:
Relevant Strategic Plan Goal:

- Strategic Issue #1: Protecting Community Health and Safety

BACKGROUND:
On October 25, 2010, the City issued a Request for Qualification for legal and technical support for the Benicia Arsenal project. A total of 16 firms responded. The firms were:

- Musick, Peeler & Garrett, LLP;
- Richards, Watson & Gershon;
- Brownshein Hyatt Farber, Schreck;
- Best, Best & Krieger;
- Paladin Law Group, LLP, teamed up with Amec;
- Hanson Bridgett, LLP;
- Thomas White Law;
- Farella Braun & Martel, LLP, with a team consisting of Marten Law, and Daniel Stephens & Associates, Inc.;
- Brooks-Street, with a team consisting of Northgate Environmental Management, Keadjian Associates, Holland and Knight and retired General Elvin Heiberg, III;
- Cox, Castle & Nicholson, LLP, teamed up with Erler & Kalinowski, Inc.;
- Wendel Rosen, teamed up with Baseline;
- Meyers Nave;
- Allen Matkins teamed up with ERM;
- ERS, teamed up with Briscoe, Ivester & Brazel LLP, Garrett & Knisely, Dongell Lawrence Finney LLP, Engineering/Remediation Resources Group;
- CDM and;
- Geosyntec teamed up with Downey Brand.

Copies of the proposals are available on line at www.ci.benicia.ca.us/arsenal .

The Council Subcommittee met on November 8 and reviewed the proposals and selected 7 firms to interview. Interviews were conducted on November 10 and 11. All of the firms, both those interviewed and those not interviewed, have excellent qualifications.

Based on the interviews, the proposal and the qualifications of the team members, it is recommended that an agreement be awarded to the ERS team. ERS has a background in environmental engineering and scientific background as well as an insurance division. The team includes Briscoe, Ivester & Brazel LLP, Garrett & Knisely, Dongell Lawrence Finney LLP, Engineering/Remediation Resources Group so a full range of services is available. A summary of the team members is available in their proposal beginning on their page 15 of 23. The team has the capacity to provide the necessary services to assist the City in assessing and managing the potential liabilities and risks associated with the state Department of Toxic Substances Control ("DTSC") proposed action. While the firm is not a registered lobbyist they can assist the City in lobbying and supporting legislative solutions. The firm is a registered insurance broker and can assist with purchasing insurance as well as reviewing past insurance.

Because the ERS team is confident that the necessary work can be done with very little cash spent by the City, the initial contract is for $10,000. The $10,000 will be used for expenses and out of pocket costs incurred by ERS. The ERS team will look to insurance, indemnity agreements and other potential arrangements to cover the full cost of their work. Their work will include reviewing existing documents, tracking down other funding sources, representing the City at meetings as well as providing public information and participation services. Of course, the contingency arrangement agreed to by ERS is not without bounds: any remedial work ERS does will not exceed the cost of any funds we obtain. If we have not obtained a cost cap policy and have exceeded any funds we have found, we will have to find funds for the work.

One of the options for financing characterization and remediation as well as public outreach and other financing needs mentioned by most of the firms submitting proposals was insurance. Although the City is currently self-insured, in the past the City purchased general insurance. It may be that the City's old policies will provide coverage for the investigation and any remediation of City facilities. We already have much of the necessary insurance documents available since they were also used for the Acme Landfill case of a decade ago. The consultant team will receive the insurance policies and make the necessary tenders to the insurance companies to get access to the insurance funding. The consultant will research to locate other items of evidence of insurance coverage such as non-traditional evidence e.g. leases or other items

mentioning possible responsibility of a party.

The City's affirmative duty and primary goal is to protect public health and safety and ensure efficient and effective cleanup of the Arsenal without adverse impacts on economic activities and businesses. With these principles in mind it appears that a collaborative approach, working with other Potentially Responsible Parties and the regulators like the State Department of Toxic Substances Control, will lead to the best result of protecting public health and safety and minimizing disruption to businesses. The ERS team proposes a collaborative approach that will protect the City from liability to the extent possible while working with and providing support to property owners who may not have access to the resources the City has. ERS's has a focus on projects that are military sites and cleanup and they have developed creative and innovative strategies for achieving clean up needs while avoiding costs to local jurisdictions and unnecessary expense to current property owners.

A draft scope of work is attached to the proposed agreement. The scope mentions the Polanco Act as being a potential route to cleaning up the properties. The California Polanco Redevelopment Act applies to redevelopment areas to allow cleanup agreements. It also provides extensive immunities and cost recovery programs that may be worth investigation. Similarly, the CERCLA 120 (f) requires the Department of Defense to allow the city to participate in the planning and selecting of the remedial plan. We will develop a definition sheet for these laws and acronyms similar to what we did with the Tourtelot project to help assist the Council and public.

To assist with the public participation efforts, the City's website already has a page devoted to this project. As noted above the location of the Arsenal page is www.ci.benicia.ca.us/arsenal. On this page, people may not only access reports and documents related to the project but may also sign up to be alerted when information is added. Other documents of interest will be added as time goes on. In addition, if approved by the City Council, a regular report will be added to the City Council's regular meetings to provide the subcommittee with an opportunity to update the public on items related to the project.

The standard city contract terms has been used with modifications to address the contingency arrangement and other special terms. For example, case law requires the City Attorney to retain (1) complete control over the course and conduct of the case; (2) a veto power over any decisions made by outside counsel; and (3) must be personally involved in overseeing the litigation. The contingency arrangement has been selected to address the City's desire for a performance based contract. If the work is not done, the consultant will not be paid a fee for services.

As a result of the November 22 discussion of this item, some changes to the agreement have been made. They include emphasis on the fact that it is desired that the consultant assist other property owners, especially smaller owners, as a resource and information conduit. Smaller property owners are defined as owning less than 11/2 combined acres. (This will account for property owners like the Potters and Hajjar/Olsen. Public outreach will specifically included all stakeholders, especially the property owners and businesses of the industrial park and lower arsenal. It was requested that the agreement provide timelines to create a chart of decision-making and action and key milestones, deliverables, and agreements. This is provided for in the preliminary goal setting meeting in the Scope of Work. Dates have not been inserted at this time since the dates will be dependent on what the goals are and how they are prioritized.

Compensation is also clarified so that the City's out of pocket compensation to ERS will not exceed more than $10,0000. Paragraph 3 a and b of the agreement provide:

> "(a) $10,000 for out of pocket expenses. CONSULTANT shall be reimbursed by CITY for out of pocket expenses incurred in the prosecution of this project. The amount of out of pocket expenses shall not exceed $10,000. An invoice and backup documentation shall be provided to CITY for the expenses. If funds become available, whether through insurance or other means, and the costs and expenses associated with CONSULTANT's services have been paid as set forth in Section 3(b) of this Agreement, then the $10,000 shall be reimbursed to CITY.
>
> (b) Contingency Agreement. This is a contingency fee agreement. Other than through the escrow process described herein and the $10,000 in out-of-pocket expenses set forth in Section 3(a) above, CITY shall pay no compensation for the services to be provided by this Agreement. The compensation paid to CONSULTANT shall be from money received by CITY from the US Treasury, State of California, insurance companies, landowners, grants, and other sources for the investigation and remediation of the Benicia Arsenal, services related to that investigation and cleanup, or from settlement, resolution, or satisfaction of any claims related to the contamination, investigation and/or remediation of the Benicia Arsenal (hereafter, "Remediation Funds"). . CONSULTANT shall have the exclusive right to negotiate Remediation Funds on behalf of CITY. All Remediation Funds shall be deposited into an escrow account, and paid from that escrow account exclusively to CONSULTANT in accordance with escrow instructions to be agreed on by CITY and CONSULTANT."

It is anticipated that Consultant will be compensated for Consultant's direct

activities in performing the characterization of sites of concern of DTSC and the remediation and closure of said sites. As noted in paragraph 3(b), remuneration may include, but not be limited to, insurance proceeds, grants, federal and/or state agency funds, and for the placement of "cost cap" or other suitable insurance. A paragraph 3 (e) has been added to provide some reimbursement to the City for its expenses.

Also, the termination clause has been beefed up to specifically refer to the expenses and any remediation funds as the City's only obligation to pay in the event of an early termination. See for example the language in Paragraph 6 (b)(ii):

> "CITY shall pay CONSULTANT for work actually performed according to the scope of work up to the effective date of the notice of termination, provided, however, that this payment is limited by the sum of the $10,000 for out-of-pocket expenses identified in Section 3(a) of this Agreement plus any Remediation Funds, as defined in Section 3(b) of this Agreement, that are received at any time."

The agreement has not been finalized yet between the parties. For example, the language on staff time and expenses needs to be worked out. If significant changes are made, the agreement will be brought back to Council for approval.

Attachments:

- Resolution
- ERS Proposal
- Draft Agreement

RESOLUTION NO. 10 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AWARDING THE CONSULTANT AGREEMENT TO ERS CORPORATION FOR THE BENICIA ARSENAL CLEANUP PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, the City issued a Request for Proposals for legal and technical support for the Benicia Arsenal Project and 16 responses were received; and

WHEREAS, seven firms were interviewed; and

WHEREAS, the Council Subcommittee recommends that the agreement be awarded to ERS Corporation.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby awards the agreement to ERS Corporation and authorizes the City Manager to execute the agreement subject to minor changes approved by the City Attorney.

*****

On motion of Council Member _____ and 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 16th day of December, 2010 and adopted by the following vote.

Ayes:

Noes:

Absent:

_____
Elizabeth Patterson, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

X.B.8

November 4, 2010

Heather McLaughlin
City of Benicia
City Attorney
250 East L Street
Benicia, CA 94510

RE: Request for Qualifications – October 25, 2010
Proposal for Project Management and Legal Services
Benicia Arsenal Investigation and Cleanup Project

Dear Ms. McLaughlin,

ERS prepared this proposal in response to your RFQ to assist the City of Benicia in meeting its goals and objectives at the Benicia Arsenal. Based on our understanding and experience with the issues, and our relationships with senior members of the stakeholders, we offer a comprehensive strategy to reach an agreement with all the relevant parties – the City of Benicia and the private property owners, the United States Army Corps of Engineers, and the California Department of Toxic Substances Control. Our strategy is focused on obtaining a voluntary cleanup agreement and provides alternatives that could also be pursued in parallel. Our goal is to provide the City with services that will result in the successful funding to remediate environmental liabilities at the Arsenal in a timely manner.

This Proposal is structured in accordance with the RFQ's Sections III and IV, and includes an Appendix containing additional detail on the firms and key personnel that comprise our team. This Proposal also attempts to adhere to the RFQ's request for brevity and, consequently, we do not recite what is known technically about the various environmental conditions at the Arsenal. Rather, this proposal briefly describes the bigger picture issues that provide the basis for the strategy we present. This proposal also constitutes just that—a proposal. We would welcome the opportunity to work with the City to better define our goals and objections, and to refine the team so as to best meet those goals and objectives.

Our Team is located strategically near the key stakeholders and decision makers affecting this project. The Project Manager and two legal firms are located near the City of Benicia and Sacramento for USACE and the regulatory agencies, and one legal team is located near the Pentagon in Washington, DC. The key personnel within the ERS Team are proposed as follows:

- Mark O'Brien and Steven Michelson with *ERS Corporation* in Walnut Creek, California
  - Extensive relations and experience with USACE (District and Division level), DoD, and DTSC
  - Program and project management, technical services evaluating and allocating environmental impacts and remediation costs, negotiations
- John Briscoe and Larry Bazel with *Briscoe Ivester & Bazel LLP* in San Francisco, California
  - Extensive relations and experience with USACE (Division and District level), DTSC, and DOJ

- Provide legal services and negotiations on regulatory matters and environmental liabilities and compliance

- David Knisely with Garrity & Knisely in Boston, Massachusetts
  - Extensive relations and experience with DoD (Pentagon level) and DTSC
  - Provide legal services and settlement negotiations with DOJ and USACE
- Tim Swickard with Dongell Lawrence Finney LLP in Sacramento, California
  - Extensive relations and experience with DTSC and DOJ
  - Provide legal services and settlement negotiations with DTSC and DOJ
- Mark O'Brien with QRS Corporation in Walnut Creek, California
  - Extensive relations and experience with the Pentagon and DTSC
  - Broker environmental insurance to transfer risk and bring cost certainty to stakeholders
- Brad Hall with Engineering/Remediation Resources Group, Inc. in Martinez, California
  - Provide technical services regarding UXO and MEC

Key personnel within ERS and Garrity & Knisely (not the larger corporate resume) have all played leadership roles in more than 50 negotiations with the Department of Defense that have resulted in the successful transfer of real property and sufficient federal funds to cover the cost of remediation. These negotiations required concurrence with local governments, DTSC, the Regional Water Quality Control Board, CalEPA, the California governor's office, and the public. While your project does not involve the transfer of real property (which occurred in the 1960s), it involves very similar environmental issues and, with the exception of the Base Realignment and Closure program (BRAC), it involves the same regulations, policies, and government personnel. Key personnel within Briscoe Ivester & Bazel have also played key roles in advising the City and in negotiations on military base transfers and with the California environmental regulatory community.

We look forward to working with you.

Regards,
ERS Corporation

Mark O'Brien
CEO

Steven Michelson, PG
Principal Consultant

Attachment

X.B.10

PROPOSAL

Project Management and Legal Services

Investigation and Cleanup Project

Benicia Arsenal

November 4, 2010

ers

THE CITY OF BENICIA CALIFORNIA

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INTRODUCTION

The nearly 3000 acre Benicia Arsenal was operated by the US military for nearly 100 years and was transferred to the City of Benicia in the 1960s. Typical of military bases, significant environmental contamination, both chemical and unexploded ordnance (UXO, including munitions of environmental concern or MEC) were released at the Arsenal. To date, nearly 400 environmental sites have been identified and the US Army Corps of Engineers (USACE) has implemented several environmental investigations, some limited remediation, and a munitions cleanup program. The California Department of Toxic Substances Control (DTSC) considers many of the investigations to be incomplete and that the significant environmental impacts remaining at the Arsenal warrant further remediation.

USACE has implemented its environmental program to date in accordance with the Formerly Used Defense Sites (FUDS) policy. Based on this policy and the environmental conditions, USACE asserts that it is no longer responsible for implementing additional work at the Arsenal. Because the City of Benicia and private entities now own the land that comprised the Arsenal, the DTSC is pressuring the current land owners to investigate and remediate the existing environmental conditions at the Arsenal, including those caused by the military.

In response, the City of Benicia seeks assistance to reach an agreement with the US Army and DTSC "for characterization and standards for clean up and implementations." We have interpreted this goal to have two discrete, yet fundamentally related elements, wherein the agreement will:

- Require the US Army to fund the completion of investigation and remediation activities of environmental impacts due to military activities and to implement this effort without delay,
- Establish cleanup levels with the DTSC.

Reaching these goals should provide some certainty to the City of Benicia and those owning land (City) at the Arsenal because the City will not bear the burden of remediating DoD environmental liabilities and all parties will be held to the same, known, cleanup levels.

APPROACH and SCOPE OF WORK

The ERS Team has developed the following approach based on our understanding of:

- City of Benicia and other stakeholder goals and objectives
- FUDS policy and its effect on the USACE
- USEPA and CalEPA regulations, including those of DTSC and the Regional Water Quality Control Board
- Legal liabilities and remedies
- Insurance options

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- Experience of the ERS Team.

We have identified two different approaches or tracks, one that seeks an Agreement with the USACE, and one that seeks recovery from insurance policies that the City, its tenants, or buyers of Arsenal property might maintain. Both tracks rely heavily on a thorough technical evaluation of the environmental conditions. If only partial insurance coverage is available, then the Agreement track with USACE may also be invoked. Under this scenario, with partial insurance coverage, the USACE may be more willing to negotiate because of the reduced cost.

The interrelationships between, and the key decision points within, the insurance, agreement and technical tracks are summarized in a flow chart at the end of this section.

SOLUTION ORIENTED APPROACH

ERS and its Team members have a proven track record to reaching win-win agreements between municipalities, the DoD, and state regulatory agencies. Key elements of our solution oriented approach are:

- Develop low cost remedies that the military has available to them because of efficiencies and creative scientific/engineering solutions in the private sector
- Obtain Insurance to transfer risk and cap remediation costs and environmental liabilities. This provides a high level of assurance to the regulatory agencies that sufficient funds will be available to address known and unknown contaminants, and provides the military and City with cost certainty.
- Make claim against prior insurance policies to cover some remediation efforts to reduce DoD, City, tenant, or owner costs.
- Prepare Special Legislation to compel the USACE to cooperate, which requires coordination with local, state, and federal representatives to create.
- Our high level of trust with senior members of the military will be key to negotiating successful agreements.
- Based on past transactions with the military, ERS has successfully recovered our client's transaction costs, including technical, legal, and insurance premium costs.

We also have experience obtaining alternative sources of federal funding to remediate properties encumbered with legacy military environmental liabilities. In addition to the insurance option that we detail below, options for federal funds beyond the USACE FUDS program include special legislation, Pentagon operating budget, and the mothball facility budget.

TECHNICAL TRACK

The Technical Track will support both the Agreement Track and the Insurance Track and has two overall goals:

- Allocate the environmental liability and remediation costs between the USACE, the City, and private owners or tenants.
- Obtain agreement from the DTSC and the USACE defining cleanup levels for contaminants at the Arsenal.

Fulfilling these two technical goals will bring certainty to negotiations with the USACE, DTSC, and the insurance companies.

Allocation of Liabilities

The technical effort to allocate liability will:

- Identify the remaining environmental impacts and risks associated with the military's activities at the Arsenal,
- Separate the military's liabilities from those caused by the City (if any) or private land owners,
- Estimate the cost to remediate and achieve closure of the military's environmental impacts.

We have found in the past that the military's assessment of its environmental liabilities has not been comprehensive and typically underestimate the risk and cost to remediate significantly. For example, on behalf of the City of Concord, ERS evaluated original military documents and third party reports (e.g. newspaper articles, magazine articles, books, interviews, etc.) to independently identify potential issues of environmental concern at the Concord Naval Weapons Station. We then compared our findings with those identified by the Navy and found the military's list to be severely lacking.

Based on our experience, we propose a similar effort at the Arsenal.

- First, we would review information describing the history of operations at the Arsenal to identify all potential environmental liabilities. This review would encompass all documents made available from the military, and review of records in libraries and museums, including newspapers and independent research.
- Second, we would compare our findings with those published by the military. It is quite likely that this comparison will show many potential sites not evaluated to date by the USACE.
- Third, we would identify significant data gaps, and estimate potential risks posed by these sites.
- Fourth, we would estimate the cost to remediate those sites already known to the DTSC. Estimated costs will be provided for all sites that will require remedial action, including all those that the USACE (and its contractor Brown and Caldwell) deemed as no further action. Between

X.B.14

the third and fourth steps, we may recommend that data be collected in the field to determine if the potential site actually poses a risk, but these costs are excluded from this proposal.

The allocated liabilities and estimated remediation costs from step four above, perhaps coupled with an insurance product to transfer the risk of cost overruns away from the City, private landowners, and the USACE, would be the basis for a VCA and possibly an ESCA with the military. The insurance would also give the DTSC confidence that sufficient funding would be available to remediate the Arsenal in the event of cost overruns or discovery of currently unknown contamination (or other contingencies). This information will also inform the effort to bring public pressure to bear upon the military and USACE.

The environmental insurance coverage would include:

- Pollution Legal Liability Coverage: This policy would protect all of the stakeholders against liabilities associated with unknown contamination.
- Remediation Cost Cap Coverage: This policy would provide coverage for cost over-runs associated with known contamination.
- Other benefits associated with these policies include coverage for MEC conditions, business interruption, 1st and 3rd party liability, property damage, off-site impacts, regulatory re-openers, and non-owned locations.
- Based on our experience, environmental liability coverage has been the *key* to assure protection for all stakeholders (including regulatory agencies) against any liabilities associated with environmental conditions. It allows all parties to cap their environmental liabilities.

Low Cost and Faster Implementation of Environmental Remedies

ERS has considerable experience developing creative solutions that provide significantly lower remediation costs than could be obtained by the military. In addition to the considerable efficiencies that the private sector can provide in comparison to federally managed environmental remedies, our creative approaches to reduce remediation costs, have included:

- Establish Land Use Covenants restricting use to commercial or industrial operations
- Design the remediation effort in concert with any redevelopment plans, such as locating a pavement feature where a remedial cap would be constructed.
- Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
- Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
- Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination.

- Implement the remedy as part of the redevelopment construction.

Development of Cleanup Levels

DoD typically performs very costly and detailed human health risk assessments (HHRA) and ecological risk assessments (ERA) to evaluate risk and establish appropriate cleanup levels for a site. These assessments are typically loaded with assumptions, controversial, and fraught with costly debate between consultants and regulators. Instead, there already exist well-established chemical specific concentrations that are widely used to screen risks:

- USEPA's Regional Screening Levels (RSLs), formerly called Preliminary Remediation Goals (PRGs), address concentrations in soil, air, and water.
- DTSC's California Human Health Screening Levels (CHHSLs) address concentrations in soil, though these are not consistently applied by DTSC and some staff prefer the RSLs.
- Regional Water Board's Environmental Screening Levels (ESLs) address concentrations in soil and ground water.
- OSHA and the USEPA have also established indoor air quality standards, which can be predicted based on soil gas concentrations.

While none of the above standards are formal remediation cleanup levels, in practice they are widely used as such because exceeding these concentrations is an indication of a potentially significant risk. Thus, concentrations below these levels would be indicative of no potentially significant risk. It is important to note that because risks can be compounded among multiple chemicals, use of these screening levels becomes somewhat more complicated when there are several chemicals at or near the screening level. Nonetheless, in general it is far simpler and cost effective to abide by these levels when designing a remedial action. In those cases where a chemical does not have a screening level, though not common can happen, then an HHRA and ERA may be necessary, depending on the proposed land use.

In addition to using established screening levels, we would also characterize background concentrations for some common inorganic and organic compounds that are at the Arsenal, such as lead, arsenic, and polynuclear aromatic hydrocarbons (PAHs, sometimes called PNAs). Finally, ERS has routinely and successfully developed background concentrations at many former military sites in California and environmental regulations cannot compel remediation to a concentration below background.

We note that nearly all metals and some radionuclides have a natural background concentration because they are associated with geologic materials. Some PAHs have a natural background concentration because they are a consequence of fire. There are many areas of California where natural background concentrations exceed screening levels. Therefore, establishing background concentrations at a remediation site is a critical early step in developing site specific cleanup levels. There are many chemicals that are considered unnatural and without a background concentration, which would then default directly to the established screening levels.

AGREEMENT TRACK

Our approach is centered on developing a **Voluntary Cleanup Agreement** (VCA) with the City, USACE (including the US Army), and DTSC. In the event the USACE is reluctant to directly engage in a VCA, we recommend pursuing the related **PRP Process** available within the FUDS policy, which requires US Department of Justice (DOJ) involvement. These approaches are similar in their technical needs, and with the exception of the DOJ, involve the same parties and most of the strategic elements. The main difference is likely to be the additional time and transactional costs associated with the more formal PRP Process.

The ERS Team has the experience and relationships to pursue the VCA or PRP Process with the USACE. Furthermore, we have successfully negotiated similar agreements with the military. Almost all of these agreements required us to implement the following steps to motivate all parties to approve and sign:

- Creative approaches that reduce remediation costs, for example:
  - Implement Land Use Covenants restricting use to commercial or industrial operations
  - Coordinate the remediation effort to the redevelopment plan, such as locating a pavement feature where a remedial cap would be constructed
  - Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
  - Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
  - Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination
  - In practice, investigation and remediation costs performed by the private sector are significantly lower than when performed by the federal government, including USACE. Furthermore, the overall cost to remediate contamination caused by military and non-military activities in a single design, implementation, and documentation effort would be much lower than if performed separately. For these reasons we have routinely been successful in receiving federal funds to implement a lower cost, more efficient, and faster tracked remediation effort.
- Acquire federal funds for remediation
  - We have successfully negotiated many Environmental Services Cooperative Agreements (ESCA) that transfer funds from the Pentagon and cover remediation costs
  - All of our agreements to date have included sufficient funds to reimburse our client's upfront transaction costs, including environmental consulting, legal support, and insurance

The City is under increasing pressure from the DTSC to remediate the Arsenal, and from those owning land and/or seeking to develop land in the Arsenal to obtain an agreement for federal funding. Alleviating the environmental impacts at the Arsenal would remove a significant obstacle to redevelopment, which is in the economic interest of the City.

DTSC

Remedial Investigations have identified significant widespread environmental impacts and risks at the Arsenal. Consequently, the DTSC has been increasing its pressure upon the City, and to some extent USACE, to compel remedial action. According to USACE, DTSC understands the USACE position with regard to the FUDS policy (see below), and believes that the PRP option, with support from the United States Department of Justice (DOJ), is more likely to obtain some federal funding of the remedy.

USACE

USACE asserts that under FUDS, they are not responsible for the remaining chemical contamination at the Arsenal that is also co-incident with contamination sourced after the facility was transferred in the 1960s, even if that contamination is due to historical military activities. The USACE also concludes that most, if not all, of the remaining contamination due solely to military activities and not co-incident with post-transfer activities does not rise to the level of significant risk and does not warrant remediation. DTSC does not agree with this USACE conclusion. The USACE states the cleanup of munitions (UXO, MEC) at the Arsenal is complete, which is consistent with the limited additional UXO (reportedly 3 or 4 items) that have been identified in the last few years. Discovery of UXO at this rate is similar to what is found at the Presidio in San Francisco and does not rise to the level of a significant UXO or MEC site. As required, the USACE will continue to respond and remove UXO as it is encountered.

FUDS Policy

Put simply, the FUDS Policy requires the USACE to clean up environmental impacts that are:

- Due solely to military activities
- Not comingled with non-military activities, which is described as "Beneficial Use"
- The contaminants have applicable preliminary remediation goals (PRGs) or maximum contaminant levels (MCLs)
- UXO and MEC, without exception.

Put another way, the FUDS policy allows the USACE to avoid responsibility for environmental impacts due to military activities where those impacts are comingled with contamination caused by non-military activities.

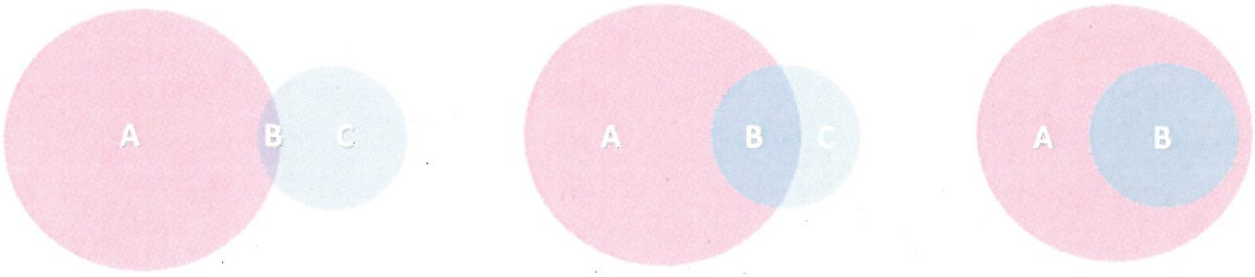
For those sites with comingled contamination, the FUDS policy provides the PRP Process with the primary goal to "resolve DoD liability in a DOJ coordinated settlement providing DoD a complete release from all claims" (FUDS Policy, 2004). At its core, the PRP Process allocates the comingled environmental impact between the various responsible parties and requires the USACE to clean up the allocated share

X.B.18

of environmental impacts due to military activities. This process can be formalized in a Consent Decree between the Army, USACE, and the private parties. The Consent Decree also could be extended to include the DTSC, which would likely reduce transaction costs and restrict the DTSC to require cleanup in strict accordance with the PRP Process agreement.

Either approach, VCA or PRP Project, will rely heavily on a technically-based allocation of environmental impacts between the military and non-military activities. Below is a schematic of some possible findings from the technical evaluation of environmental conditions at the Arsenal.

Possible Allocation of Responsibility for Environmental Contamination



A = Contamination sourced solely from military operations at the Arsenal

B = Contamination comingled from both the Arsenal and City of Benicia, including private land owners

C = Contamination sourced solely from the City of Benicia, including private land owners

A + B + C = All of the contamination at the Arsenal

At a minimum, the VCA and the PRP Process will formalize the allocation of responsibility within the B area, which represents comingled contamination. As represented above, the amount of contamination due solely to the military, solely to the City and private sector, or comingled, is not currently well understood. Due to comingling, we note that the USACE identified 23 No DoD Action Indicated (NDAI) sites (Area B) in the 2004 Site Investigation Report. There is considerable disagreement between the USACE and the DTSC at 32 non-comingled sites (Area A) regarding the need for further action. Continued delay towards closure of these liabilities hampers the redevelopment of the Arsenal and economic conditions of the City.

Legal Issues and Strategies to Consider

The environmental impacts at the Arsenal, the transfer of the property to the City, the sale of some property to private parties, and the slow pace of environmental cleanup all pose potential legal liabilities and economic impact to the City. We suggest that the City should consider addressing these in the overall project, some which could be addressed in the agreement. These issues and approaches are listed according to the sources of contamination, represented as Areas A, B, and C above.

<u>Area A Issues and Strategies</u>

- Under FUDS, all environmental liabilities are the responsibility of the USACE to remedy. However, disagreements continue between the USACE and DTSC as whether or not the sites

require further action. Without formal DTSC closure of these liabilities, the sites are unlikely to be developed, which could impact the City's economy. The City's options to consider:

- Include requirements in the Agreement that compels the USACE to prioritize funding to promptly obtain closure with DTSC.
- Pursue legal remedy against USACE due to the transfer of contaminated property, associated environmental risks, economic impacts, etc.
- Utilize the Anti-Deficiency Act (ADA) to demonstrate that the USACE spent money for the wrong purpose by not prioritizing the environmental cleanup at the Arsenal, and thereby compel the USACE to prioritize cleanup at the Arsenal.
- Review the documents that transferred the Arsenal to the City to identify environmental obligations of the Army. If the Army retained obligations then those could be pursued.
- Review the City's insurance policies in place at the time of the transfer of the Arsenal for environmental exclusions. If there are no exclusions then environmental issues are considered included, and the City could pursue the policy to cleanup environmental impacts, including those due solely to military activities.

- Technical evaluation would characterize the environmental impact and estimate the cost to remediate.
- The City may be vulnerable to legal claims and remedies for selling or leasing contaminated property to a private party, which include diminution of property value and/or significant human health risks due to exposure.
  - Agreements from the VCA or PRP Process should preclude such claims.
  - Review sales and lease agreements between the City and private buyers and lessors and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

<u>Area B Issues and Strategies</u>

- All of the issues associated with Area A apply to Area B, plus the following.
- Under FUDS, the PRP Process is used to address the DoD's liabilities for comingled environmental impacts.
  - We recommend pursuing a VCA before deciding to implement the PRP Process
- Technical evaluation will characterize all environmental impacts and allocate the impact between the military, the City and/or the private entity that leased or purchased the property. Costs to remediate all contamination will be estimated.

X.B.20

Area C Issues and Strategies

- Review sales and lease agreements between the City and tenants and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

Legal Approach

The attorneys could begin negotiations immediately with their counterparts at the USACE, Pentagon, and DTSC.

- The objective of discussions with the USACE is to better understand their legal position, identify paths toward the VCA, and to make the USACE aware of the claims the City and property owners could file to recover damages for injury and remediation costs incurred to cleanup military environmental liabilities.

- The objective of discussions with the Pentagon is to make them aware of the remaining environmental issues at the Arsenal and to utilize existing relationships to bring pressure on the USACE to sign a VCA.

- The objective of discussions with the DTSC is to calm the delay orders and/or fines pending an agreement and source of funding. Making the DTSC aware of some of the general approach may be necessary in order to gain their support.

In the case the preferred voluntary agreement process is found to be infeasible, the legal team would pursue the USDOJ PRP Project approach. Here, the USDOJ gets involved to allocate the comingled liability between the DoD/USACE and current landowners, which are both PRPs. The allocation becomes the basis for a settlement that requires the DoD/USACE to cover their share of the remediation costs. These allocations are usually formalized in a USDOJ Consent Decree, which in rare cases includes DTSC in a Fed/State Joint Consent Decree, that we would negotiate for the City.

Following the transfer of the Arsenal to the City, the City sold or leased portions of the Arsenal to private parties. It is possible that these parties could claim damages against the City for receiving contaminated property and/or being exposed to chemicals that pose(d) a human health risk. At the discretion of the City, the legal team could begin to formulate strategies to protect the City from such claims. These protections could also include the insurance policies the City has or had in place at the time.

We recommend that the City consider delaying the start of VCA discussions with USACE until the first steps in the insurance and technical tracks are completed. This delayed start would allow the City to be better informed regarding the extent of the comingled contamination and the possibility for insurance to cover some or all of the remediation costs without involving the USACE. Assuming insurance is available to cover some portion of the environmental remediation, the likely effect would be to reduce cost to the federal government and encourage USACE to support the VCA.

The Role of Insurance to Support Agreements with DoD and DTSC

Insurance has played a *critical role* in many of the base transfers and liabilities associated with environmental conditions. It gives all parties a level of protection against costs and liabilities associated with both known and unknown pollution conditions.

Insurance allows DoD to cap their costs associated with both their known and unknown environmental liabilities. It provides them with the comfort that they will not have to return to the site due to ongoing unfunded environmental liabilities.

Insurance also provides DTSC with the assurance that adequate funds will be available to clean-up the site, even if the money provided by USACE is not sufficient, or if other stakeholders were to declare bankruptcy.

The Role of Public Relations

We propose to work closely with the City to inform the public and private property owners of the legacy environmental impacts associated with the military's use of the Arsenal. We also suggest that these efforts be oriented to organize and encourage the public to bring pressure on the military to assume proper responsibility for their historical actions. With a compelling technical argument, sufficient public pressure, the prudent legal actions, the USACE could be compelled to simply "do the right thing" and either take on the remedy themselves or use an ESCA to fund the remedy by the City.

The Role of the Team's Relationships

Successful implementation of the above strategy will rely on the strength of our team's relationships with decision-makers within the Pentagon, USACE, DOJ, and DTSC. Reaching a final agreement with the various parties will require extensive negotiation and trust among all parties. Our team offers established relationships with all key stakeholders, with the exception of the private landowners and public. The following table highlights those relationships.

Stakeholder		Team Member
City of Benicia	Mayor and Attorney	John Briscoe, Mark O'Brien
USACE – Sacramento District	Engineering and Environmental Section Chief and Technical Manager (Bruce Handel)	Steven Michelson
USACE – South Pacific Division	General Rock Donahue	John Briscoe, Mark O'Brien
	Sr Aides: Paul Robershotte and Pat Oyabe	John Briscoe
	Environmental Chief (Bruce Handel – as of Dec 2010)	Steven Michelson
Pentagon	US Army Attorneys and General	David Knisely, Mark O'Brien

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US Department of Justice	Various Attorneys	David Knisely, Mark O'Brien John Brisoe, Larry Bazel, Tim Swickard,
CA DTSC	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson David Knisely, Tim Swickard
Regional Water Board	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson Larry Bazel, David Knisely

INSURANCE TRACK

Based on review of Arsenal transfer documents, sales and lease agreements and current and former insurance policies, (including the City's and former and current land owners' and tenants' policies) we would determine if the environmental liabilities could be reimbursed by making a claim against *non pollution exclusion policies*.

Page 14 has been omitted from this document.

DESCRIPTION OF ORGANIZATION, MANAGEMENT and TEAM MEMBERS

ERS has assembled a team of firms offering relevant, successful, and highly experienced technical and legal services. This section summarizes our team and the appendix contains a detailed Statement of Qualifications for each firm. The ERS Team consists of:

Company	Primary Role	Sr Key Personnel	Services
Environmental Risk Services (ERS)	Prime	Mark O'Brien Steven Michelson	Program Management Project Management Technical environmental services
Briscoe Ivester & Bazel	Legal	Tom Briscoe Larry Bazel Christian Marsh	Negotiations with USACE and DOJ Defense from third party claims Environmental Compliance
Garrity & Knisely	Legal	David Knisely	Access to the Pentagon Negotiations with USACE, DTSC, DOJ
Dongell Lawrence Finney	Legal	Tom Swickard	Negotiations with USACE, DOJ, DTSC
Quantitative Risk Services (QRS)	Insurance	Mark O'Brien	Evaluating existing policies Brokering new environmental policies
Engineering/Remediation Resources Group (ERRG)	UXO/MEC	Brad Hall	UXO/MEC evaluation and remediation cost estimates

SUMMARY OF TEAM MEMBERS

Environmental Risk Services (ERS)

By design, ERS combines high-level environmental consulting services with insurance brokerage services to identify, manage, and resolve risk. We help our clients minimize risk and maximize opportunities with strategic management and resolution of environmental liabilities. It is imperative to fully understand the Benicia Arsenal's environmental conditions (such as Munitions and Explosives of Concern (MEC), Unexploded Ordinance (UXO), Hazardous, Toxic and Radioactive Waste (HTRW), Chemical Warfare Material (CWM)) in order to allocate risks and liabilities, determine environmental management options, and ultimately develop an engineering cost estimate the City's ability to negotiate a *Voluntary Consent Agreement* will be compromised. Therefore, we see our responsibility as to provide the City with the necessary information that is needed to successfully negotiate a *Voluntary Consent Agreement*, or another structured solution that allows the City to manage risks, and begin cleanup and redevelopment in a timely fashion.

In several cases, the Department of Defense (DoD) has recommended that ERS assist various parties, such as regulators, cities, military and developers in resolving technical issues in order to find environmental solutions. These failing efforts were the result of others making unrealistic and

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uncoordinated assumptions about the site conditions, risks, liabilities, the military's willingness to negotiate and fund cleanup, land use plans, and developer flexibility. A profound lack of coordination of the various interests, or deferring too much leadership to the development community can pose significant, and at times insurmountable, obstacles to successful negotiations.

Briscoe, Ivester & Bazel

Attorneys at Briscoe Ivester & Bazel LLP are expert in remediation of contaminated soil and groundwater, hazardous waste, toxic torts, and liabilities under the Resource Conservation & Recovery Act, the Comprehensive Environmental Response, Compensation & Liability Act ("Superfund"), California hazardous waste law, and California Hazardous Substance Account Act. They regularly assist clients on environmental remediation matters, from initial environmental due diligence on a particular property to developing and negotiating strategies for remediation of contaminated sites. The firm's attorneys have successfully resolved contamination issues at dozens of properties since the 1980s by developing assessment and remediation strategies, negotiating with potentially responsible parties or state and federal agencies, by helping clients assess the risks posed by contamination, or, when necessary, by defending enforcement actions and litigating responsibility issues. This experience has included advising the cities of Vallejo and San Diego on the transfer and reuse of the Mare Island Naval Shipyard and Naval Training Center at San Diego.

Attorneys at the firm know the regulatory and permitting agencies at all levels, including the USACE, DTSC, USDOJ, the Regional Water Quality Control Board, and the US Environmental Protection Agency. The firm has developed good working relationships with these agencies, which helps us develop creative solutions and to advocate for its clients.

Garrity & Knisely

The law firm of Garrity and Knisely has developed extensive expertise in negotiating the transfer of military bases scheduled to be closed or realigned, and in the implementation of base reuse plans. Garrity and Knisely has provided legal services to public agencies and local redevelopment authorities all in support of negotiating the transfer of military bases along with ESCAs that would fund the cleanup of legacy environmental liabilities. These negotiations are complex and require federal approval at the highest levels of the Pentagon and State. David Knisely has routinely met with high ranking officials at the Pentagon, including the Army, USDOJ, DTSC, and the Regional Water Board. He is very well known and highly regarded in this arena and has strong positive relations will be critical to the success of this project.

Dongell, Lawrence, Finney

Dongell Lawrence Finney has substantial experience in representing various clients in matters involving state and federal Superfund (HSAA and CERCLA). These matters typically involve both defending against such claims, as well as pursuing cost allocation against those responsible for the contamination at issue. Tim Swickard was selected to join our team because of his tenure as a Senior DTSC attorney and has knowledge of negotiating successful agreements with the USACE, DTSC, and USDOJ.

Quantitative Risk Services (QRS)

Unlike all other environmental consulting firms, ERS has a sister company, Quantitative Risk and Insurance Services (QRS), which is a licensed and bonded environmental insurance brokerage company (#0D87970). Together, ERS and QRS provide our clients a coordinated blend of environmental engineering, scientific, and risk analysis services, coupled with specialized insurance brokerage services. In short, we reduce risk by adding certainty.

Our risk analysis integrates our expert knowledge of the environmental conditions and the needs of the transfer and supporting agreements with knowledge of the insurance marketplace and our clients' tolerance for risk. Modeling environmental risk scenarios allows more informed decisions about costs, benefits, risk management options, and negotiating the remedial costs. As a result, our clients receive superior representation in the underwriting process and the most favorable insurance policy terms, conditions, and premiums. While insurance may not always be a complete solution for our clients, it is a powerful tool to manage exposure to environmental liabilities.

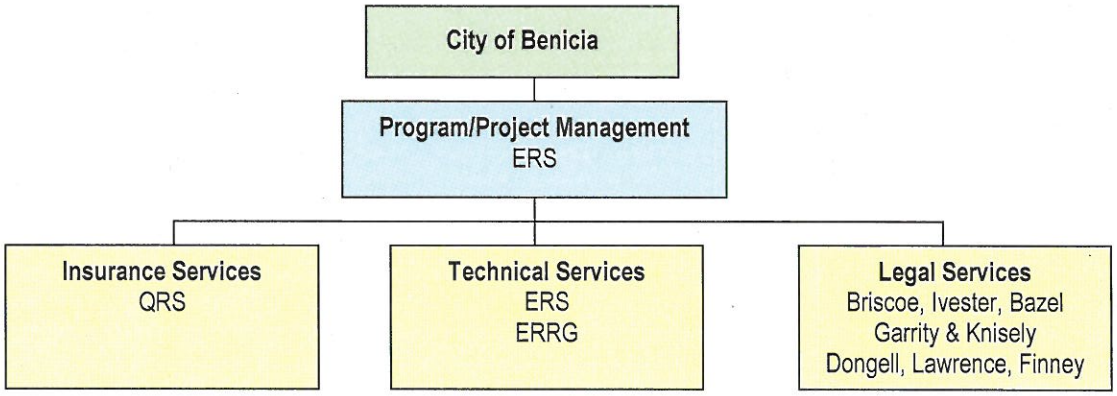
QRS core services include:

- Environmental liability management, Finite liability transfer,
- Insurance brokerage and policy negotiations on such products as pollution liability, remediation cost cap, and blended insurance programs,
- Insurance placement, policy maintenance, and claims representation and support.

Engineering/Remediation Resources Group (ERRG)

During ERRG 's time in the MEC industry they have compiled an exceptional record of accomplishments. ERRG has completed assessment and investigation projects for both public and private entitles under varying terrain, vegetation, and weather conditions. They fully understand that every site is unique and planned MEC operations will be dependent on its historical use, physical features, intended end use, state of available technologies and budgetary limitations. Through their extensive planning and execution of "end-use" driven remediation projects, they have developed innovative, unique and cost effective techniques that benefit all parties involved in the current and future usage of the site. They believe that the integration of different disciplines often times provide opportunities for gains in efficiency helping to reduce the overall time and cost required of a project. ERRG currently employs the senior UXO/MEC specialists, formerly with NGEM, that were responsible for the success remediation of the Tourtelot Site.

ORGANIZATIONAL CHART



SUMMARY OF KEY SENIOR PERSONNEL

Mark O'Brien (ERS, QRS)

Mr. O'Brien brings over 20 years' experience assessing and managing risks associated with major port operations, dredging, Brownfields, and DoD facilities for Base Realignment and Closure (BRAC) projects involving chemical and radioactive contamination. He advises the Institute for Defense Analysis (IDA) and Chaired the committee dealing with contaminated military properties. Mark was responsible for the nation's first early transfer of contaminated property to the private sector. Mark also is an environmental insurance broker.

Steven Michelson (ERS)

Mr. Michelson brings over 20 years of experience applying technical, economic, and regulatory analysis to the management and closure of environmental liabilities at industrial, port, mining, and military facilities, including BRAC sites. He has addressed environmental liabilities including chemical, radiation, and UXO/MEC contamination. He has particular expertise with NRDA and assessing hydrogeologic conditions and the interaction between ground water and surface water, including coastal aquifers.

John Briscoe (Briscoe, Ivester, Bazel, LLP)

Beginning with his time in the California Attorney General's Office, John has successfully litigated land use, environmental, and natural-resources cases for over thirty-eight years. In addition, John has represented clients in hundreds of matters before administrative agencies such as the USACE, USEPA, DTSC, and State and Regional Water Resources Control Boards. He represented the cities of Vallejo and San Diego in the closure and transfer of the former Mare Island Naval Shipyard and Naval Training Center at San Diego.

Larry Bazel (Briscoe, Ivester, Bazel, LLP)

Larry is a nationwide expert in Clean Water Act issues related to water quality and wastewater discharges, and has years of experience in negotiating and resolving contaminated properties issues under CERCLA, RCRA, and California hazardous waste laws. In the 1970s, before he began practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency and the National Science Foundation. He litigates cases involving contaminated property and related environmental issues. He has litigated, negotiated with regulatory agencies, and advised potential buyers and lenders about dozens of contaminated properties.

Christian Marsh (Briscoe, Ivestor, Bazel)

Christian has been practicing land-use and natural-resources law for more than ten years. Before law school, he spent five years at the U.S. Department of the Interior and the White House Office on Environmental Policy, where he had occasion to work with USACE and DoD on flood management and base transfer issues at Alameda Naval Air Station. He was also responsible for assisting John Briscoe in representing the cities of Vallejo and San Diego on the transfer of the former Mare Island Naval Shipyard and the Naval Training Center at San Diego. Christian counsels clients on contaminated property matters, and he is responsible for ensuring compliance with the California Environmental Quality Act and the National Environmental Policy Act.

David Knisely (Garrity & Knisely)

Mr. Knisely is a nationally recognized expert regarding the completion of property transfers at closing and realigning military installations. He has a great deal of experience in matters related to managing the risks associated with the environmental clean-up at closing and realigning installations. He has been involved in coordinating clean-up and redevelopment priorities, and has successfully negotiated consent agreements, covenants not to sue, findings of suitability to transfer, environmental services cooperative agreements and related documents with federal and state environmental agencies and military departments. He has also completed the negotiation of clean-up privatization and early transfer agreements at closing Army, Air Force and Navy installations.

Tim Swickard (Dongell, Lawrence, Finney)

Mr. Swickard, in his former positions as Chief Counsel and later Director of Cal/EPA Department of Toxic Substances Control, oversaw the negotiation of the Voluntary Cleanup Agreements, Redevelopment Agreements, Cleanup Orders and cleanup criteria associated with the Brownfield redevelopment of former DoD bases including Fort Ord Army Base, Tustin Naval Air Station and Mare Island Naval Base, defense contractor facilities including Whittaker Bermite Santa Clarita and large and small contaminated properties including BKK Hazardous Waste Landfill, with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities. Mr. Swickard negotiated the final model Joint Consent Decree language between the State of California and the USEPA and USDOJ for joint federal/state superfund sites.

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Brad Hall (ERRG)

Mr. Hall is a Sr. Program Manager with more than 20 years of expert Environmental Remediation Services and Site Assessment experience. He offers substantial expertise concerning military installations and has overseen the investigation, remedial design, and implementation of UXO/MEC programs at several military installations. ERRG is respected by USACE Sacramento and the former NGEM employees that implemented the UXO remedy at Tourtelot now report to Mr. Hall.

ORGANIZATION QUALIFICATIONS

The ERS Team commits to provide the City with the resources necessary to competently implement this project. The Appendix lists the senior ERS staff for this project. ERS has been involved in the development, quantification, negotiation, and implementation of many transfers of military installations. ERS's primary role at these sites has been to represent the interest of the property recipient, such as developers and the Local Reuse Agency (LRA). ERS has served both as the Program Manager and Advisor to several LRAs and developers negotiating the voluntary consent agreements to support the transfer of military installations and associated funding for the remediation of environmental contamination. In all cases where ERS has served as the Program Manager and or Technical Advisor, the military base has successfully transferred, with the necessary funding to complete

Military Installation (sample list)	ERS Role	Early Transfer Status
Fleet Industrial Supply Center Oakland	Program/Technical Manager	Transferred *with Remedial Compensation*
Louisville Naval Ordnance Station	Program/Technical Manager	Transferred *with Remedial Compensation*
Naval Communications Center (INS) Stockton	Program/Technical Manager	Transferred *with Remedial Compensation*
Oakland Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Point Molate Naval Fuel Depot	Program/Technical Advisor	Transferred *with Remedial Compensation*
Rough and Ready Island Navy Supply Center	Program/Technical Manager	Transferred *with Remedial Compensation*
Selfridge Air Force Base (Sebille Manor)	Program/Technical Manager	Transferred *with Remedial Compensation*
Badger Military Badger Military Ammunition Plant	Program Advisor	Transfer pending
Camp Bonneville Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Concord Naval Weapons Stations	Technical Advisor	Transfer pending
Fitzsimmons Military Medical Center	Technical Advisor	Transferred *with Remedial Compensation*
Ft. McClellan Military Base	Technical Advisor	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Legacy Partners	Program Manager	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Weston Solutions	Program Manager	Transferred *with Remedial Compensation*
Presidio Army Base	Advisor	Transferred *with Remedial Compensation*

PROPOSED PROJECT SCHEDULE

Our proposed approach and scope of work contains two paths for the City to consider, and each path contains several critical decision points that will be based upon information that has not yet been developed. It is also very likely that new information will be revealed that will require the technical, legal, and insurance approaches and scopes of work to be modified. Consequently, it is premature to provide the City with a comprehensive schedule through to the Agreement.

While this may appear to be a process fraught with considerable uncertainty of success, it is not. The ERS Team has successfully implemented more than 50 similarly complicated projects involving the DoD, state regulatory agencies, municipalities, and insurance companies. Simply, it is critically important to remain flexible and to adapt to new information as it becomes available.

With that said, we can offer the following general schedule for the initial steps, assuming the necessary information is readily available. We expect that during the contracting phase that the City will determine with track or tracks they wish our team to follow. First, we will meet with DTSC to delay, if not eliminate, the issuance of the Imminent and Substantial Endangerment letter.

Insurance Track

We estimate that approximately 2 to 3 months will be required to evaluate documents transferring the Arsenal to the City, the insurance policies available to the City, and the lease and sale agreements and supporting insurance policies between the City, tenants, and private property owners. At the conclusion of this first step, we will advise the City as to the viability of pursuing insurance policies as a remedy for cleanup.

Technical Track

We estimate approximately 2 to 3 months will be required to evaluate the environmental history of the Arsenal and to review existing data describing environmental impacts that may have occurred after the Arsenal was transferred. This effort will first review the adequacy of the 1998 Records Research Report that identified 389 sites, many of which were dismissed in the 2004 Preliminary Assessment. This effort will also involve a review of files at the regulatory agencies to evaluate non-military impacts.

If we conclude that the military's effort was inadequate, we may recommend an independent review of the available records, as described above, to identify potential sites, which will likely require another 2 to 3 months. We would then compare our findings with those of the military to identify critical data gaps, which would require approximately 1 to 2 months.

If there are no critical data gaps, we would then begin to assess comingled contamination and allocation of environmental liability, and this effort could require approximately 2 to 3 months. If there are critical data gaps, we would provide recommended options on the next steps.

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Agreement Track

We could begin discussions with the USACE concurrent with the above tracks. However, we suggest delaying the start of these discussions until the first steps of the insurance and technical tracks are completed. Information obtained from these two tracks will help the City to decide on the best course of action, insurance or agreement, or both in the event that adequate insurance is not available for all sites.

PROPOSED BUDGET

Similar to the above caveats on the project, it is premature to provide the City with a proposed budget until the City decides on the course of action it chooses to prioritize. In addition, the RFP is unclear on the payment mechanism, be it performance based, or time and materials as indicated in the contract. Performance based payments may also have options, that would provide payment upon completing interim milestones, partial payment until completion, financing, etc.

REFERENCES, RELATED EXPERIENCE and EXAMPLES OF WORK

The following lists relevant references for ERS. Many more references can be provided for our team members.

- Charles Foster - Former Executive Director, Port of Oakland 925.997.0185
- Richard Ascheris - Executive Director, Port of Stockton 209.946.0246
- Isabella Alasti – Senior Legal Counsel DTSC 714.484.5405
- Michael Waters –Senior Legal Counsel Department of the Navy 619.532.2312
- Ted Mankowski - Engineering Manager, Lawrence Livermore Laboratory 510.495.2012
- Jose Salcedo-Office of Military Facilities DTSC 916.255.3741
- Dr. Phillip Giovinnini-Senior Scientist RWQCB 916.464.4812
- David Knisley - BRAC Legal Counsel 617.367.3990
- Wayne Arny - Former Deputy Assistant Secretary of the Navy 703.697.6811
- Bill Baron - City Manager Clark County 360.397.2000
- William Cassidy - Former Deputy Assistant Secretary of the Navy, 202.255.2273
- Robert Davenport - Former Army Office of Legal Counsel 703.693.3665
- Howard Kelsey - Former Director of Navy Real Estate 202.685.9198
- Gordon Palmer - City Manager, City of Stockton 290.937.8212
- Miki Schneider - Director of Joint Powers Authority, Fort McClellan 256.236.2011
- Harry Zimmerman - Former Navy Director of BRAC 571.216.6716

APPENDIX

STATEMENT OF QUALIFICATIONS

RESUMES OF KEY PERSONNEL

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ENVIRONMENTAL RISK SERVICES EXPERIENCE

1. DESCRIPTION OF ORGANIZATION, MANAGEMENT AND TEAM MEMBERS

ENVIRONMENTAL RISK SERVICES CORPORATION (ERS)

By design, ERS combines high-level environmental consulting services with insurance brokerage services to identify, manage, and resolve risk. We help our clients minimize risk and maximize opportunities with strategic management and resolution of environmental liabilities. It is imperative to fully understand the Benicia Arsenal's environmental conditions ((such as Munitions and Explosives of Concern (MEC), Unexploded Ordinance (UXO), Hazardous, Toxic and Radioactive Waste (HTRW), Chemical Warfare Material (CWM)) in order to allocate risks and liabilities, determine environmental management options, and ultimately develop an engineering cost estimate the Cities ability to negotiate a *Voluntary Consent Agreement* will be compromised. Therefore, we see our responsibility to provide the City with the necessary information that is needed to successfully negotiate a *Voluntary Consent Agreement*, or another structured solution that allows the City to manage risks, and begin cleanup and redevelopment in a timely fashion.

In several cases, the Department of Defense (DoD) has recommended that ERS assist with assisting various parties, such as regulators, cities, military and developers in resolving technical issues in order to find an environmental solutions. These failing efforts were the result of others making unrealistic and uncoordinated assumptions about the site conditions, risks, liabilities, the military's willingness to negotiate and fund cleanup, land use plans, and developer flexibility. A profound lack of coordination of the various interests, or deferring too much leadership to the development community can pose significant, and at times insurmountable, obstacles to successful negotiations.

We know there are several ways to solve a problem and that our clients constantly manage coordinated as well as competing goals and interests that are inherent in a high-profile public project. By working closely with our clients, we help the project to proceed and evolve as needed to optimize economic and political success. We provide our clients with technical environmental services and major asset redevelopment services throughout the United States. Our clients include industry, municipalities, real estate developers, attorneys, government, and quasi-governmental organizations such as ports.

The following is a list of key management and technical personnel at ERS:

Mark J. O'Brien - M.Sc., President

PROGRAM MANAGER AND RISK ANALYSIS MANAGER:

Mr. O'Brien brings over 20 years' experience assessing and managing risks associated with major port operations, dredging, Brownfields, and DoD facilities for Base Realignment and Closure (BRAC) projects involving chemical and radioactive contamination. He advises the Institute for Defense Analysis (IDA) and Chaired the committee dealing with contaminated military properties. Mark was responsible for

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the nation's first early transfer of contaminated property to the private sector. Mark also is an environmental insurance broker.

Sydney University of Technology: B.A. Physiology
University of California-Berkeley: MSc. Human Bio-dynamics
U.C. Berkeley: U.C. Santa Barbara: Ph.D. (candidate) Env. Science/Nuclear Engineering

Steven I. Michelson, R.G. - Principal Geologist:

TECHNICAL PROJECT MANAGER:

Mr. Michelson brings over 20 years experiences applying technical, economic, and regulatory analysis to the management and closure of environmental liabilities at industrial, port, mining, and military facilities, including BRAC sites. He has addressed environmental liabilities including chemical, radiation, and UXO/MEC contamination. He has particular expertise with NRDA and assessing hydrogeologic conditions and the interaction between ground water and surface water, including coastal aquifers.

Lehigh University: B.S. Geology and B.S. Civil Engineering

Peter D. Weiler, Ph.D., Senior Geophysicist

MEC/UXO INVESTIGATION MANAGER:

Dr. Weiler brings over 15 years applying geophysical techniques to environmental and energy problems around the world. He investigates hydrogeological and geophysical conditions at BRAC, CERCLA, Brownfields, landfills, and industrial facilities. His experience includes investigating radiation contamination. His geophysical training and experience has proven to be well adapted to the identification and location of UXO/ MEC.

University of California-Santa Cruz: Ph.D. Earth Sciences,

James F. Durkin, CHg., Senior Hydrogeologist

SOIL AND GROUND WATER INVESTIGATION MANAGER

Mr. Durkin has over 20 years' experience managing soil and ground water investigations and remediation at sites in Northern California and Hawaii. Mr. Durkin conducts aquifer tests, analyzes ground water basins, and prepares and manages monitoring plans. Mr. Durkin has also planned and completed remedial actions at dozens of sites including former fuel facilities and chemical plants.

Cornell University: BA Geological Science

Dan Holmes, M.L.I.S., Senior Geographer and Research Librarian

INFORMATION MANAGER:

Mr. Holmes has substantial experience with library management and planning, information research, and environmental analysis. He brings a diversity of experience in hydrology, water resources, geomorphology, city planning, and historical geography. He has performed many literature and archive research projects, with emphasis on interpreting aerial photographs, public records research, and developing digital and web-based libraries. M.A. University of California – Berkeley, Geography

University of California-Berkeley: M.L.I.S. Library & Information Studies

2. ORGANIZATION QUALIFICATIONS

ERS QUALIFICATIONS:

ERS has been involved in the development, quantification, negotiation, and implementation of many transfers of military installations. ERS's primary role at these sites has been to represent the interest of the property recipient such as developers and the Local Reuse Agency (LRA). ERS has served both as the Program Manager and Advisor to several LRAs and developers negotiating the voluntary consent agreements to support the transfer of military installations and associated funding for the remediation of environmental contamination. ERS has participated at various levels in the transfer and remediation of many military installations. In all cases where ERS has served as the Program Manager and or Technical Advisor, the military base has successfully transferred, with the necessary funding to complete the remediation of

Military Installation	ERS Role	Early Transfer Status
Fleet Industrial Supply Center Oakland	Program/Technical Manager	Transferred *with Remedial Compensation*
Louisville Naval Ordnance Station	Program/Technical Manager	Transferred *with Remedial Compensation*
Naval Communications Center (INS) Stockton	Program/Technical Manager	Transferred *with Remedial Compensation*
Oakland Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Point Molate Naval Fuel Depot	Program/Technical Advisor	Transferred *with Remedial Compensation*
Rough and Ready Island Navy Supply Center	Program/Technical Manager	Transferred *with Remedial Compensation*
Selfridge Air Force Base (Sebille Manor)	Program/Technical Manager	Transferred *with Remedial Compensation*
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Camp Bonneville Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Concord Naval Weapons Stations	Technical Advisor	Transfer pending
Fitzsimmons Military Medical Center	Technical Advisor	Transferred *with Remedial Compensation*
Ft. McClellan Military Base	Technical Advisor	Transferred *with Remedial Compensation*
Guam Naval Base	Technical Advisor	Transferred *with Remedial Compensation*
Hunters Point Naval Shipyard	Technical Advisor	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Legacy Partners	Program Manager	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Weston Solutions	Program Manager	Transferred *with Remedial Compensation*
Presidio Army Base	Advisor	Transferred *with Remedial Compensation*
Stockton Army Base	Advisor	Transferred *with Remedial Compensation*

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the military's contamination.

Following the successful transfers identified above, ERS has served as the program manager implementing the privatized cleanup funded by voluntary consent agreements at the following early transfer installations:

- **Fleet Industrial Supply Center**

  Mr. Mark O'Brien led the LRA for the Port of Oakland for the early transfer of FISC, managed the privatized cleanup, and brought the installation to complete closure with the state and federal regulatory agencies. Not only was FISC-Oakland the first early transfer of a military installation, it is also the first early transfer where all of the environmental costs were paid for by the military within a voluntary consent agreement. All of the installation restoration sites have been remediated and reached regulatory closure. Development of the entire base has been completed. This facility was closed on schedule and under budget.

- **Rough and Ready Island Navy Supply Center**

  ERS served as the Program manager representing the LRA throughout the negotiation of the early transfer of the Rough and Ready Island Navy Supply Center, which was formerly a Navy Ordnance Depot. The property, consisting of an entire island, is currently valued at approximately one billion dollars. Our role included evaluating the environmental liabilities, quantifying risks, negotiating the voluntary consent agreements, developing the remedial funding agreements, such as and Environmental Service Cooperative Agreement (ESCA) with the military, negotiating remediation approaches with the regulatory agencies, representing the transaction to the Governor's office, preparing the various transaction documents, negotiating the various land use covenants and institutional controls, and securing appropriate insurance that transferred risk away from the LRA.

  Following the negotiation of the ESCA, ERS has continued as Program Manager responsible for the privatized cleanup of the property and complying with all Navy and insurance reporting requirements. In addition, we continue to support the LRA with a variety issues related to redevelopment and infrastructure improvements. To date, all remedial sites have been closed well ahead of schedule and well below budget.

- **Naval Communications Center Firing Range**

  ERS was the Program manager representing the Port of Stockton for the early transfer of the INS property, which is owned by the military. Our role includes evaluating the environmental liabilities, quantifying risks, negotiating the voluntary consent agreements with the military, negotiating remediation approaches with the regulatory agencies, representing the transaction to the Governor's office, preparing the necessary transaction documents, negotiating the various land use covenants and institutional controls, and securing the appropriate level of insurance. As the Program Manager; ERS is responsible for the privatized cleanup of the property and complying with all military and insurance reporting requirements.

ERS personnel bring a wealth of experience characterizing and remediating environmental liabilities at many other military installations. These installations posed environmental liabilities associated with flight-line contamination with petroleum hydrocarbons and chlorinated solvents, landfills, perchlorate contamination in ground water, radiation, UXO/MEC, and chemical and biological warfare agents. These military facilities include:

- Riverbank Army Ammunition Plant
- Stockton Army Ordnance Depot
- Sharp Army Depot
- Umatilla Army Ordnance Depot
- Castle Air Force Base
- Edwards Air Force Base
- Hamilton Air Force Base
- Luke Air Force Base
- Mather Air Force Base
- McClellan Air Force Base
- Norton Air Force Base
- Otis Air Force Base
- Pease Air Force Base
- Point Arena Naval Air Station
- Travis Air Force Base
- Westover Air Force Base
- Mare Island Naval Shipyard

Overall, ERS offers significant experience characterizing, remediating, and transferring a wide range of environmental liabilities at over 35 Army, Navy, Air Force, and Marine bases.

Due to the nature of the operations at military installations, many of the environmental liabilities must be managed under RCRA Corrective Action protocols. For example, underground storage tanks and landfills (solid waste management units) must be investigated, remediated, and closed pursuant to RCRA. ERS offers considerable experience with RCRA at industrial and military facilities.

ERS offers significant program management and hands-on investigation and remediation experience from a variety of CERCLA and RCRA sites with HTRW liabilities in Texas and around the country. We have investigated, remediated, supported the assessments of human health and ecological risks, evaluated short and long term risks and liabilities and associated risk-transfer mechanisms. An example timeline of investigation, remediation, and closure of an HTRW site at an early transfer military installation is attached

We understand that RCRA and CERCLA sites typically involve increased public scrutiny and media exposure. We have investigated and/or remediated a variety of CERCLA and RCRA sites, including U.S. military installations (Army, Navy, Air Force) with chemical, radiation, and MEC/UXO contamination, U.S. DOE facilities with radiation contamination, industrial facilities (manufacturing, petrochemical, wood-treating, high-tech, plating, etc.) with chemical contamination, and mines (gold, uranium), and landfills (industrial, military, and municipal). We have addressed chemicals of concern ranging from organics (e.g., chlorinated solvents and pesticides), to metals (e.g., mercury, lead, arsenic, hexavalent chromium), to radioactive substances (e.g., alpha, beta, gamma emitters), to residues from chemical warfare agents and unexploded ordinance (UXO).

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We also bring experience characterizing UXO/MEC environmental liabilities, evaluating risk and associated risk transfer mechanisms, and/or providing planning for UXO/MEC removal at Ft. McClellan, Riverbank Army Ammunition Plant, Sharp Army Depot, Umatilla Army Ordnance Depot, Stockton Army Ordnance Depot, Naval Communications Center Firing Range, Rough and Ready Island, and Travis, Castle, Edwards, Mather, and Luke Air Force Bases.

At all facilities, ERS offers the expected suite of site characterization experience and services, ranging from investigation work plan preparation and implementation, drilling, sampling, monitor well construction, surface water and ground water sampling, data QA/QC, data evaluation, and technical report preparation.

ERS Capabilities:

ERS is a multidisciplinary environmental science and engineering consulting company specializing precisely in the requested scope of services with experience unsurpassed in the environmental consulting marketplace. We provide expert technical and strategic services to public and private entities seeking to identify, evaluate, manage, reduce, and/or leverage environmental risks and liabilities, including those associated with the early transfer of BRAC military installations. We bring the full range of expertise needed to expertly and effectively manage the transfer, voluntary consent agreements and privatized cleanup process.

The skills necessary to meet the needs of our clients in the development and negotiation of voluntary consent agreements, transfer and privatized remediation process can be generally categorized as technical, management, risk analysis, and strategic. We know that all these skills require careful, accurate, direct, clear, and routine written and oral communications with a wide variety of people, including the responsible parties, attorneys, military, insurance company, regulators, and the public.

Our experience continues to be successfully applied to a variety of projects, including:

- Early transfer of Base Realignment and Closure (BRAC) military installations
- Superfund investigations, remediation, and liability closure (CERCLA)
- RCRA corrective actions and closure
- Real estate transaction and redevelopment (e.g., Brownfields)
- Ecological assessments
- Permitting
- Risk analysis, management, and transfer
- Land use planning and water resource planning
- Natural resource damage assessment (NRDA) and resource equivalency analysis (REA)
- Aquifer storage and recovery (ASR)

The relevance of our skills begins with the academic training of our staff, continues with the professional technical experience obtained at numerous military and industrial facilities, and is directed by senior project and program managers with experience at several large military

installations. The average environmental consulting experience offered by senior members of ERS is approximately 25 years.

ERS personnel bring considerable experience working on state and federal Superfund and RCRA sites across the country. We have performed, supported, and/or produced remedial investigation and feasibility studies (RI/FS), human and ecological risk assessments, remedial action plans (RAP), records of decision (ROD), remedial design plans, and remediation completion reports. ERS routinely prepares National Contingency Plan (NCP)-consistent documents for the investigation, remediation, and closure of BRAC military installations and industrial sites.

ERS Technical Capability:

In addition to the fundamental in-depth knowledge and extensive experience we have with military installations, we also bring extensive technical, management, and risk analysis expertise that is needed to resolve the variety of environmental liabilities. Our experience with these liabilities ranges from petroleum hydrocarbons released from underground tanks and associated pipelines, to refueling facilities along runways, maintenance facilities, to fire training areas and burn pits, to ammunition manufacturing facilities, to munitions bunkers, and to landfills with UXO/MEC, industrial, and radioactive wastes.

These projects require a wide variety technical expertise and professional experience that can be distilled into a few general core services, including:

- Investigation and remediation of contaminated soil and ground water
- Environmental liability identification and resolution
- Risk assessment, transfer, and insurance acquisition support
- Regulatory negotiations, public representation, and permitting
- Remediation engineering and construction management

ERS technical skills include the relevant scientific, engineering, and economic arenas. Our technical services and skills encompass:

- Hydrology, Geography
- Geophysics, Geochemistry
- Hydrogeology
- Ecology and biology and wetlands
- Ecological risk assessment support
- Human health risk assessment
- Resource equivalency analysis
- Bench scale and pilot scale testing
- Remediation engineering
- Construction management
- Ground water modeling
- Surface water modeling
- Geochemistry modeling
- Water resource planning support
- Land use planning support
- Public communications
- Expert witness and testimony
- Graphic Information Systems (GIS)
- Database design and management
- Web-based electronic library

Scientifically, ERS offers geologists with experience in hydrogeology, hydrology, inorganic and organic geochemistry, soil chemistry, geophysics, and structural geology. These skill sets

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extend to geochemical modeling, ground water modeling, chemical fate and transport modeling, radiation wastes, isotope chemistry, and geophysical investigations designed specifically to identify MEC and UXO. We have particular expertise identifying munition residues and evaluating their short and long term fate and transport and risks.

Our engineering skills cover a breadth of remediation design needs, ranging from simple monitoring and straightforward excavation and removal efforts, to vapor recovery systems, to enhanced biological attenuation, to in situ technologies such as biological fixation of hexavalent chromium in ground water or chemical fixation of heavy metals in soil, to hazardous and radiation waste removal, to landfill caps.

Our engineers and scientists also bring considerable experience to facility demolition projects. Prior to demolition, the integrity of the facility must be assessed and the wastes streams to be generated must be identified. These waste streams include asbestos and lead based paint, PCBs, associated with the building materials, and tanks, pipelines, transformers, and ballasts associated with building infrastructure. Appropriate waste management, handling, transport, and disposal plans are prepared to support the identification of appropriate subcontractors. Our construction management expertise is readily applicable to demolition management.

Economic analysis is critical to the decision-making, selection, and management process, as well as to the design and scaling of mitigation actions, if required. We are fully versed and experienced with cost estimation, financial modeling, present and future engineering cost analysis, the selection of appropriate metrics when evaluating mitigation alternatives.

ERS Management Capability

ERS management skills include program management, project management, technical management, information management, and subcontractor management.

- **Program Management**

  Program management is a skill set and experience well represented by ERS and the project team assembled for the Benicia Arsenal. The role of the Program Manager is to coordinate all the various voluntary consent agreements in a manner consistent with the strategic needs, scheduling limitations, and financial constraints of the client. The program Manager must also be able to develop appropriate remedial strategies and resulting financial impacts with respect to remediation. Additionally the Program Manager must integrate and communicate well and routinely with the client, legal counsel, technical and project managers, regulators, the public, and the military. This role is critical to the development of the numerous documents and agreements and to the success of the early transfer process.

  We bring considerable program management expertise derived from our high level involvement at several military installations (see above lists). Unlike other firms, we also bring hands-on knowledge of the program management effort from the perspective of the LRA, because the ERS program manager previously lead an LRA. Finally, we bring comprehensive program management experience obtained from other complex projects,

such as Superfund/CERCLA, natural resource damage assessment programs at large industrial facilities, and aquifer storage and recovery feasibility studies.

- **Project Management**

  Project management begins with the scoping of the project's goals, purpose, objectives, and discrete elements, tasks, or steps required through completion. The project management responsibilities continue directly to team creation, organization, direction, scheduling, resource loading, and cost accounting. Assembling the team with necessary technical and communication skills is critical to the overall success of the project. Our scheduling and accounting systems routinely track in near real time the costs versus percent complete to assure timely project completion and to identify potential cost/schedule overruns.

- **Technical Management**

  Technical Management runs in parallel with Project Management, to assure that the end product meets all required technical objectives, and data quantity and quality objectives. We place only senior individuals with the right mix of technical experience, maturity, and people management skills needed to meet the objectives of the project, and with the strategic experience required to meet the goals of the program.

- **Information Management**

  Information management is an increasingly vital technical skill requiring rigorous quality assurance and quality control tasks, data base design and management, and implementation of internal and public information management systems. ERS brings specific expertise in this regard ranging from public information research and analysis, aerial photo interpretation, data compilation, and electronic data management, interface, key-word search, and presentation systems using such vectors as geographical information systems (GIS), web-based file transfer protocols (ftp), and electronic libraries.

- **Subcontractor Management**

  Subcontractor management begins with the scoping of the project's goals, purpose, and objectives, continues through the request for qualifications/proposal stage, through contracting, insurance verification, and subcontractor performance monitoring. We have considerable experience working with and directly managing subcontractors performing services such as laboratory analysis, drilling, excavation, construction, remediation, and hazardous waste transport and disposal. Our accounting systems are designed to track subcontractor costs versus percent complete to assure timely project completion and to identify potential cost/schedule overruns.

ERS Risk Analysis Capability

Once the environmental liabilities are characterized to facilitate transfer and or voluntary consent agreements, we will analyze the suite of risks posed by the environmental issues at the Benicia Arsenal. Risk analysis is critical to identify appropriate risk management mechanisms that will reduce the client's exposure, address concerns expressed by the government and

military, and add certainty to the entire early transfer process and subsequent privatized cleanup.

Unlike all other environmental consulting firms, ERS has a sister company, Quantitative Risk and Insurance Services (QRS), which is a licensed and bonded environmental insurance brokerage company (#0D87970). Together, ERS and QRS provide our clients a coordinated blend of environmental engineering, scientific, and risk analysis services coupled with specialized insurance brokerage services. In short, we reduce risk by adding certainty.

Our risk analysis integrates our expert knowledge of the environmental conditions and the needs of the transfer and supporting agreements with knowledge of the insurance marketplace and our client's tolerance for risk. Modeling environmental risk scenarios allows more informed decisions about costs, benefits, risk management options, and negotiating the remedial costs. As a result, our clients receive superior representation in the underwriting process and the most favorable insurance policy terms, conditions, and premiums. While insurance may not always be a complete solution for our clients, it is a powerful tool to manage exposure to environmental liabilities.

QRS core services include:

- Environmental liability management, Finite liability transfer,
- Insurance brokerage and policy negotiations on such products as pollution liability, remediation cost cap, and blended insurance programs,
- Insurance placement, policy maintenance, and claims representation and support.

3. REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK

ERS has supported the development and implementation of many voluntary consent agreements at military installations. Our primary role is always to represent the interests of our client. Depending on the property, our services ranged from overall program management, environmental and engineering assessment, remedial cost development, advisory and strategic, risk analysis, and insurance brokerage. Our involvement with military bases has included characterization and risk assessment, strategy development, structuring various agreements between multiple parties, site transfer, and continued through cost negotiations, privatized cleanup, closure, and redevelopment. The following briefly describes our role in some military properties.

- **Fleet Industrial Supply Center**
  ERS served as the Program Manager and lead the LRA for the Port of Oakland throughout the early transfer process, funding negotiation, risk analysis, insurance acquisition, privatized cleanup, and redevelopment. The property has been successfully transferred.
- **Louisville Naval Ordnance Station**
  ERS served as the Program Manager for the LRA throughout the site characterization, transfer, financial negotiations and agreements, risk analysis, and insurance acquisition. The property has successfully transferred.

- **Oakland Army Base**
  ERS served as the Program Manager for the Port of Oakland throughout the early transfer process, financial negotiations, risk analysis, insurance acquisition, and privatized cleanup. The property has successfully transferred.

  Rough and Ready Island Navy Supply Annex
  ERS served as the Program Manager for the Port of Stockton throughout the transfer process, financial quantification and negotiation, risk analysis, and insurance acquisition. We are currently implementing the cleanup and assisting with the redevelopment of the property. The property has been successfully transferred.

- **Concord Naval Weapons Stations**
  ERS assessed the Cities environmental liabilities through the investigation of the site. Our role was to assist the City develop a risk analysis associated with environmental liabilities.

- **Stockton INS**
  ERS served as the Program Manager for the Port of Stockton throughout the characterization, voluntary consent agreement development, early transfer process, financial quantification and negotiation, risk analysis, and insurance options. ERS will also manage the privatized cleanup and assist with redevelopment.

- **Fitzsimmons Army Medical Center, Camp Bonneville – Army, Presidio Army Base, Badger Army Ammunition Plant Hunters Point Naval Shipyard, El Toro Marine Corps Air Station**
  ERS advised the LRA on risk management and provided liability insurance placement. These properties have been successfully transferred.

- **Mare Island Naval Shipyard**
  ERS advised the developers throughout the characterization, voluntary consent agreement development, early transfer process, financial quantification and negotiation, risk analysis, and insurance options. The property has successfully transferred.

4. REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK

The following lists relevant references for ERS.

Charles Foster - Former Executive Director, Port of Oakland	925.997.0185
Richard Ascheris - Executive Director, Port of Stockton	209.946.0246
Isabella Alasti – Senior Legal Counsel DTSC	714.484.5405
Michael Waters –Senior Legal Counsel Department of the Navy	619.532.2312
Ted Mankowski - Engineering Manager, Lawrence Livermore Laboratory	510.495.2012
Jose Salcedo-Office of Military Facilities DTSC	916.255.3741
Dr. Phillip Giovinnini-Senior Scientist RWQCB	916.464.4812
David Knisley - BRAC Legal Counsel	617.367.3990

▪ John Briscoe - Briscoe Ivestor & Bazel LLP	415.402.2700
▪ Wayne Arny - Former Deputy Assistant Secretary of the Navy	703.697.6811
▪ Bill Baron - City Manager Clark County	360.397.2000
▪ William Cassidy - Former Deputy Assistant Secretary of the Navy,	202.255.2273
▪ Robert Davenport - Former Army Office of Legal Counsel	703.693.3665
▪ Howard Kelsey - Former Director of Navy Real Estate	202.685.9198
▪ Gordon Palmer - City Manager, City of Stockton	290.937.8212
▪ Miki Schneider - Director of Joint Powers Authority, Fort McClellan	256.236.2011
▪ Harry Zimmerman - Former Navy Director of BRAC	571.216.6716

Mark J. O'Brien

CEO

Mr. O'Brien is the Chief Executive Officer (CEO) of *Environmental Risk Services Corporation Inc.* (ERS; Inc.) ERS; Inc. specializes in engineering and environmental consulting to both government and private entities. ERS; Inc. consults in multiple disciplines including geology, geophysics, hydrology, engineering, toxicology and physiology. ERS; Inc. also provides brokerage services for environmentally impaired property and risk based transactions and holds both surplus lines and special lines licenses. ERS; Inc. is *unique* in its ability to provide its clients with fully integrated solutions to assessing and quantifying risk. ERS; Inc. provides program management, legal support; engineering, environmental, transactional and insurance consulting services to support our clients.

Mr. O'Brien has extensive experience resolving risk-based issues at military properties around the country and the world. He has served as a consultant to local governments and Fortune 500 companies. Mr. O'Brien has been an advisor to the Institute for Defense Analysis (IDA) through the Department of Defense (DOD) and has served as Chairman.

Mr. O'Brien was responsible for the development of a compartmentalized fugacity model based upon mass balance mathematical quantification to determine risk, which has resulted in supporting conveyance of transactional risk. Mr. O'Brien also serves as an advisor to both private industry and government entities including airports, maritime ports and military facilities around the country.

Mr. O'Brien was Senior Vice President for Marsh & McClennan and specialized in the modeling, quantification, and transfer of liabilities associated with transactional risk. Mr. O'Brien also worked with the National Economic Research Associates (NERA). Mr. O'Brien has also served as a manager for major U.S. Ports. As such, Mr. O'Brien was responsible for supporting a $1 billion capital development program, merger and acquisitions, and significant real estate transactions.

PROFESSIONAL WORK HISTORY

Environmental Risk Services, Inc., Chief Executive Officer
Marsh & McClennan, Senior Vice President
National Economic Research Associates, Senior Vice President
Port of Oakland, Manager Environmental Science
Continental Corporation, Director Environmental Science

EDUCATION and CERTIFICATION:

University of California - Berkeley/Santa Barbara: PhD (candidate)
University of California - Berkeley: Master's Degree
Sydney University of Technology; Bachelor's Degree
Licensed California Broker –Special lines, Surplus Lines, Property & Casualty

PRESENTATIONS:

Mr. O'Brien has made a number of presentations concerning transferring contaminated properties including:

- Department of Energy International Conference
- Environmental Super Conference
- Pacific Coast Association of Port Authorities
- National Association of Installation Developers
- Office of the Secretary of Defense Community Conference
- American Association of Port Authorities
- Defense/State Memorandum of Agreement Conference
- Association of Defense Communities

NEWSPAPER, JOURNAL ARTICLES:

A number of journals and newspaper articles have featured Mr. O'Brien's work. They include:

- Stockton Record, August 17, 2010
- Contra Costa Times, April, 2010
- San Francisco Chronicle September 13, 2003
- Stockton Record, August 2003
- National Association of Installation Developers (NAID), 2000
- EPA Superfund Report, Vol. XIII, No. 15, July 21, 1999
- The Oakland Tribune, February 20, 1999
- San Francisco Sunday Examiner and Chronicle, July 11, 1999
- The Oakland Tribune, July 9, 1999.

Mr. O'Brien has also written a number of papers and contributed to a number of published articles in the area of contaminated properties and risks associated with environmental contamination.

RELEVENT BASE CLOSURE EXPERIENCE

Mr. O'Brien has advised (cities, counties, developers, DOD, port authorities, LRAs, attorneys) on many base closures throughout the country and world. Some of these bases include:

- Oakland Army Base
- Hunters Point Naval Base
- Bonneville Army Base
- Fleet Industrial Supply Center Oakland
- Point Molate Naval Base
- Naval Ordnance Station-Louisville
- Mare Island Naval Base
- El Torro Marine Base
- Badger Army Ammunition Base
- Fort McClellan Army Base
- Rough & Ready Naval Base
- Stockton INS Base

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Steven I. Michelson, R.G.

Principal Geologist

Mr. Michelson applies technical, economic, and regulatory analysis to assist clients in the cost effective management and closure of environmental liabilities. Mr. Michelson characterizes hydrogeologic conditions; contaminant sources, extent, transport, and fate; and evaluates remediation alternatives. He has particular expertise in the assessment of coastal aquifers, the migration of ground water to the ocean, and interactions between ground water and surface water. He routinely designs and implements investigations that are NCP consistent, enables assessments of human and ecological risk, and supports evaluations of remedial alternatives. He offers solutions to liabilities that comprehensively address regulatory, public, stakeholder, technical, and financial concerns.

SELECTED PROJECT EXPERIENCE:

- Rough & Ready Island, California:
  Lead the technical evaluations supporting the transfer and supporting insurance policy of this former Navy installation. Designed and implement investigations of contaminated sites. Assessed data and authored remedial investigation and closure reports. Assisted with the risk analysis and transfer of 1,500 acres of former military property.
- INS Parcel, California:
  Lead the technical evaluations supporting the transfer of this Immigration and Naturalization Service parcel. Designed and implement investigations of contaminated sites. Assessed data and authored remedial investigation and pending closure reports.
- Alameda Naval Air Station, San Francisco Bay, California:
  Assessed the migration and discharge of ground water from a landfill to ponds, wetlands, and sediments and water in the San Francisco Bay. Conclusions are used in assessing ecological risks and screening remedial actions.
- Department of Defense and Department of Energy, Arizona, California, New England:
  Prepared and implemented Remedial Investigations and Feasibility Studies at several installations, including Riverbank Army Ammunition Plant; Sharp Army Depot; and Mather, Castle, Edwards, Hamilton, Norton, Travis, Luke, Pease, Westover, and Otis Air Force Bases.
- Port of Stockton, Stockton, California:
  Principal Scientist directing the investigation of environmental issues related to dredging activities, upland placement of dredge sediments, reuse of dredge sediments, and related potential impacts to surface and ground waters.

- Mid-Peninsula Regional Open Space District, South San Francisco Bay:
  Lead technical expert in negotiations with other PRPs and federal and state of California resource trustees. NRDA claim was for alleged environmental injuries to the Guadalupe River and South San Francisco Bay, including surface water, sediments, ground water, fish, and birds from historical mercury mining. Used resource equivalency analysis (REA) models to scale alleged resource injuries to resource service flows.

- Napa Sanitation District
  Completed the initial feasibility studies of an aquifer storage and recovery project using reclaimed water. Successfully received Grant funding from the Department of Water Resources and State Water Resources Control Board.

- Unocal Avila Beach, Central Coast, California:
  Investigated transport and fate of ground water and petroleum discharged into the intertidal, surf, ocean, beach sediments, estuary, and creek. The findings were used to estimate human and ecological risk, and injury to surface water and biological resources. Participated in natural resources damage assessment (NRDA) negotiations with Regional Board and California Fish and Game.

- Unocal Guadalupe Oil Field, Central Coast, California:
  Investigated pathways for contaminated ground water to impact surface waters, pond sediments, and vegetation. Technical Co-Chair of a trustee/PRP group assessing hydrogeologic setting and ground water contamination associated with NRDA claim. Valued ground water injury, impacts to water resources, and scaled a variety of alternative ground water restoration/mitigation projects.

- Petroleum Sites, several states:
  Provided technical and strategic support in the investigation, remediation, restoration, monitoring, emergency response, and closure of sites overseen by regulators operating pursuant to the Clean Water Act and resource trustees operating pursuant to NRDA. Work has been performed throughout the US at gasoline stations, bulk terminals, pipelines, refineries, and production fields. Clients include oil companies, airlines, airports, Ports, and DoD.

PROFESSIONAL WORK HISTORY

Environmental Risk Services, Corp.
Applied Water Resources
Entrix
Roy F. Weston, Inc.

EDUCATION and TRAINING:

Lehigh University: B.S. Geology and B.S. Civil Engineering
UC Berkeley: Haas School of Business, MBA Evening Program, graduate study

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University of San Francisco: Hazardous Material Management, MS Program, graduate study
EPA Monitored Natural Attenuation
ASTM Risk Based Corrective Action
Princeton Ground Water Course (NGWA)
Mediating Environmental Agreements (Concur);
UC Berkeley Extension in Statistics, Accounting, Microeconomics, and Macroeconomics.

CERTIFICATION

Registered Geologist; California - 5165
Professional Geologist in Oregon and Delaware
40-hour OSHA Training

ORGANIZATIONS

National Ground Water Association
Groundwater Resources Association
International Association of Hydrogeologists
American Society of Civil Engineers
California Mining Association
Environmental Committee Technical Lead on Abandoned Mines (1997-2000)

PUBLICATIONS and INVITED PRESENTATIONS

Mr. Michelson has prepared numerous technical reports, confidential memorandums, discussion papers, and strategy documents for clients, senior management, and attorneys on a wide range of topics and issues. Topics include site characterization, agency relations, beneficial uses of water, natural resource damage assessments and characterization of injury and damage to water, resource equivalency analysis to scale mitigation, analysis of mitigation alternatives, QA/QC issues, and contaminated ground water as a vector to human health and ecological exposure.

Micheslon, S. I., *Funding Water Resource Projects with Compensatory Restoration, Mitigation, and Resource Equivalency Analysis*; AWRA, November 2003 and AIH, October 2003.

Micheslon, S. I., *Mechanics and Strategies of Water Equivalency Analysis*. Southwest Hydrology Journal, November-December 2002 issue focused on Water NRDAs.

Michelson, S. I., and del Nevo, A., *Resource Equivalency Analysis to Scale Compensatory Mitigation.* Invited presenter at the Annual Conference of the California Mining Association, May 1998.

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BRISCOE IVESTER & BAZEL LLP

STATEMENT OF QUALIFICATIONS

I. FIRM PROFILE

Briscoe Ivester & Bazel LLP is devoted to excellence in the practice of land-use, environmental, and natural-resource law, with the goal of providing outstanding client service through expertise, insight, and responsiveness. The firm strives to understand each client's business, interests, and goals and to assemble the best talent, from inside and outside the firm, to achieve the desired results.

Attorneys at the firm are expert in remediation of contaminated soil and groundwater, hazardous waste, toxic torts, and liabilities under the Resource Conservation & Recovery Act, the Comprehensive Environmental Response, Compensation & Liability Act ("Superfund"), California hazardous waste law, and California Hazardous Substance Account Act. They regularly assist clients on environmental remediation matters, from initial environmental due diligence on a particular property to developing and negotiating strategies for remediation of contaminated sites. The firm has successfully resolved contamination issues at dozens of properties since the 1980s by developing assessment and remediation strategies, negotiating with potentially responsible parties or state and federal agencies, by helping clients assess the risks posed by contamination, or, when necessary, by defending enforcement actions and litigating responsibility issues.

Attorneys at the firm know the regulatory and permitting agencies at all levels, including the U.S. Army Corps of Engineers, Department of Toxic Substances Control, and the U.S. Environmental Protection Agency. The firm has developed good working relationships with these agencies, which helps us develop creative solutions and to advocate for its clients.

The firm's more significant redevelopment projects have included the reuse of Mare Island Naval Shipyard, Naval Training Center San Diego, and Alameda Naval Air Station.

Finally, Briscoe Ivester & Bazel has a long history of successfully counseling public agencies and private clients on matters requiring compliance with the California Environmental Quality Act and National Environmental Policy Act. This work has covered a wide variety of projects, including residential, commercial, industrial, utility and water, energy and resource development, port and waterfront, and remediation projects.

Briscoe Ivester & Bazel LLP can help advise the City of Benicia on developing site characterization and remediation strategies, and in assessing risks and negotiating with property owners, potentially responsible parties, and the various federal and state agencies involved. If the matter must ultimately be litigated, the firm can represent the City in administrative enforcement actions or contribution actions brought in federal or state courts to address contamination, remediation, and cleanup responsibility issues.

II. ATTORNEY PROFILES

John Briscoe. Beginning with his time in the California Attorney General's Office, John has successfully litigated land use, condemnation, environmental, and natural-resources cases for over thirty-eight years. In addition, John has represented clients in hundreds of matters before administrative agencies such as the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, the California Department of Toxic Substances Control, and State and Regional Water Resources Control Boards, and various Regional Water Quality Control Boards.

Larry Bazel. Larry is a nationwide expert in Clean Water Act issues related to water quality and wastewater discharges. In the 1970s, before he began practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency and the National Science Foundation. He litigates cases involving contaminated property and related environmental issues. He has litigated, negotiated with regulatory agencies, and advised potential buyers and lenders about dozens of contaminated properties.

Christian Marsh. Christian has been practicing land-use and natural-resources law for more than ten years. Before law school, he spent five years at the U.S. Department of the Interior and White House Office on Environmental Policy. Christian counsels clients on contaminated property matters, and he is responsible for reviewing a number of the firm's large-scale EIRs and ensuring compliance with the California Environmental Quality Act and the National Environmental Policy Act.

III. REPRESENTATIVE MATTERS

A. Representative Environmental Litigation Matters

Pellegrini v. Technichem, Inc. The firm represents three agencies of the state of California—the Department of Corrections, California Franchise Tax Board, and California Highway Patrol—in litigation relating to contamination of property in Emeryville.

Movassate v. Dudley Ridge Properties, LLC. The firm represented a manufacturer of industrial controls in defense of claims that the manufacturer contaminated the property during its operations. The case involves claims under CERCLA and the California Hazardous Substances Account Act (HSAA), the state equivalent.

Robert Leal v. Regional Water Quality Control Board. The firm represents a former landowner against claims by the Regional Board that the landowner is liable for mercury contamination. The matter is currently pending before the State Water Resources Control Board.

Volvo GM Heavy Truck Corporation v. HM Holdings. The firm represented a property owner in a private cost-recovery action against former owners and chemical manufacturers for property in Oakland contaminated with zinc, other metals, and acids. We creatively resolved the case to client's satisfaction.

Wiegmann & Rose v. NL Industries. The firm represented a former property owner in a private cost-recovery action against previous owners for contaminating 23-acre site in the City of Richmond with lead, toluene, and other solvents. We prevailed on liability issues, and then settled the case to client's satisfaction.

Hewlett Packard v. Aydin. The firm represented a former tenant in defense of claims that it breached its lease by contaminating the property with PCBs and solvents. We resolved the case to the client's satisfaction.

Moore v. Dole Food Company. The firm represented a former owner of real property in defense of claims that it fraudulently failed to disclose presence of underground tank. We successfully negotiated settlement with plaintiff and insurers.

United States v. CTS Printex. The firm represented landowner in CERCLA cost recovery action.

United States v. Lockheed. The firm's attorneys represented solvent-using facility, and convinced the U.S. Department of Justice, representing EPA, not to file a CERCLA cost-recovery action against the client.

B. Representative Environmental Counseling Matters

Henkel Corporation. The firm represents a chemical manufacturer in negotiations with the Regional Water Quality Control Board, San Francisco Bay Region, on investigation and cleanup of former industrial site contaminated with petroleum, metals, and pesticides.

Ross Valley Sanitary District. The firm advised property owner about PCB and metals contamination regulated by DTSC.

CTS Printex. The firm represented electronics manufacturer at federal superfund site. The site was contaminated with chlorinated solvents, including TCE. The Regional Water Quality Control Board, San Francisco Bay Region, was the lead state agency.

E/M Corporation. The firm represented a solvent-using facility in negotiations with the U.S. Environmental Protection Agency and Regional Water Quality Control Board concerning responsibility for, and investigation and cleanup of, groundwater contamination with chlorinated solvents, including TCE and PCE.

E/M Corporation. Attorneys at the firm represented Mountain View solvent-using facility in negotiations with its neighbor about responsibility for soil contamination along the boundary, and for groundwater contamination downgradient. Negotiated satisfactory cleanup program with the Regional Water Quality Control Board, San Francisco Bay Region, and a settlement agreement with the neighbor.

Industrial Waste Processing. The firm's attorneys represented generator in negotiations with the Environmental Protection Agency at a federal superfund site (reprocessing wastes, including petroleum and metals wastes).

Moss Landing Commercial Park. The firm's attorneys represented property owner in Moss Landing in negotiations with Regional Water Quality Control Board, Central Coast Region, about chromium and petroleum contamination.

Purchases and Sales of Contaminated Properties. The firm's attorneys represented buyers, potential buyers, or sellers of contaminated properties in performing due diligence and negotiating purchase and sale agreements, including Fairchild Industries property (TCE and other solvent contamination in Mountain View and Palo Alto); Tenneco property (petroleum contamination in Bakersfield); Santa Fe Pacific Realty (later Catellus) property (review of 100,000+ acres, including Atlas Mine, a former asbestos mine later listed as a Superfund site); and Heavenly Ski Resort property (petroleum contamination in Lake Tahoe Region).

Insurance and Financing of Contaminated Properties. The firm advised insurers and lenders about potential sales of contaminated properties.

C. Base Closure and Reuse Matters

Mare Island Naval Base, Vallejo. Represented city in negotiations with the California State Lands Commission on settlement of State title claims and environmental contamination and remediation liabilities at the former naval base transferred to the city's local reuse authority under the Base Closure and Realignment early-transfer process. Negotiated environmental liability concerns in furtherance of the transfer, cleanup, and settlement of state claims.

Naval Training Center, San Diego. Represented city in negotiations and settlement of title claims by the State of California to lands transferred by the U.S. Navy to the city under the Base Closure and Realignment process.

John Briscoe

Law Practice

John Briscoe has tried cases in state, federal, and international courts, and has argued before the California Supreme Court, the United States Supreme Court, and the Permanent Court of Arbitration in The Hague. In real property and environmental litigation he has represented large real-estate, water, oil, and mining companies, the country's largest title insurers; the California Land Title Association; the States of Alaska, Hawaii, Georgia, and California; the Government of Guam; the Ports of Oakland and Richmond, California; and many city and county governments. In addition he has represented the Federal Democratic Republic of Ethiopia, the Republic of Korea, the State of Kuwait, and the United Nations Compensation Commission (set up to hear the claims against Iraq, particularly the environmental claims, following the Gulf War of 1991).

Between 1981 and 2000, Mr. Briscoe served as special counsel to the State of Alaska in Supreme Court litigation against the United States. The case concerned the limit of American territorial waters off the north coast of Alaska between Icy Cape and the American-Canadian boundary. He served as special counsel to the State of Georgia in its Supreme Court land and maritime boundary dispute with the State of South Carolina. He has been a special assistant attorney general for the State of Hawaii with regard to the State's claim to the resources of the submerged lands of the Hawaiian archipelago, and for matters arising under Hawaii Homes Commission Act of 1920. And he has served as special counsel to the Territory of Guam in litigation against the United States Government seeking recovery of some 23,000 acres of Land.

Between 1972 and 1980, he practiced in the Land Law Section of the California Attorney General's Office, where he was responsible for major litigation including several actions in the original jurisdiction of the United States Supreme Court. Mr. Briscoe has published three books and numerous articles on natural resources, land use, land title and oceans law. He has authored papers and books on other subjects as well.

Prior Experience

Deputy Attorney General, The State of California, San Francisco, California (1972-1980); visiting scholar, University of California, Berkeley, Boalt Hall School of Law, San Francisco, California (1990-2000).

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Education

J.D. cum laude, University of San Francisco Law School, 1972; Law Review

Admissions

State Bar of California

United States District Court for the Northern, Eastern and Central Districts of California

Ninth Circuit Court of Appeals

Supreme Court of the United States

Permanent Court of Arbitration

Selected Professional Activities

Member and past chair, Board of Directors, San Francisco Bay Planning Coalition; president, Historical Society of the Northern District of California; past member, Council of Friends of The Bancroft Library, University of California, Berkeley; chair, Advisory Board of the MFA Program in Creative Writing, St. Mary's College of California; California Sea Grant Program Advisory Board; Advisory Board, Law of The Sea Institute, University of California, Berkeley; American Bar Association; California Bar Association;

Representative Cases

Permanent Court of Arbitration, The Hague

Eritrea-Ethiopia Claims Commission. Represented Ethiopia in this case arising from the war between the two countries between 1998 and 2000.

United States Supreme Court

Friends of the Earth v. Laidlaw Environmental Services, Inc., 528 U.S. 167, 145 L.Ed.2d 610 (2000). Filed amicus curiae brief on behalf of the California Association of Sanitation Agencies.

United States v. Alaska, 521 U.S. 1, 138 L.Ed.2d 231 (1997). Tried lengthy case before Special Master J. Keith Mann in 1984 and 1985, and appeared for defendant State of Alaska before the Supreme Court in 1997. The case concerned the application of international law-of-the-sea conventions to the Arctic coast of Alaska.

United States v. California, 449 U.S. 1028 (1980). Tried case before Special Master Alfred Arraj in 1978 and 1979, and appeared before the Supreme Court on behalf of defendant State of California in 1980. The case concerned the application of international conventions to the coast of California.

Georgia v. South Carolina, 475 U.S. 1115 (1986). Served as special counsel to the State of Georgia during trial proceedings before special master, and before Supreme Court, on the questions of the lateral seaward boundary, initially to 200 nautical miles, between the states of South Carolina and Georgia, under applicable international law.

California v. Arizona and the United States, U.S. Supreme Court (1977-78). Following a decision of the Court, 440 U.S. 59, tried the case before the Court's Special Master Roy W. Harper, which resulted in decree in favor of California, 452 U.S. 431 (1981).

United States v. Louisiana, Alabama and Mississippi Boundary Case, 470 U.S. 93 (1985). Filed brief as amicus curiae on behalf of the State

of Alaska, urging the position of the states.

United States v. Maine, Rhode Island and New York Boundary Case, 469 U.S. 504 (1985). Filed brief as amicus curiae on behalf of State of Alaska, urging the position of the states.

Mr. Briscoe has participated as amicus curiae in numerous other cases in the Supreme Court from 1974 to date.

California Supreme Court

Stockton Citizens for Sensible Planning v. City of Stockton, A.G. Spanos Companies, et al. (review granted; case awaiting oral argument).

Redevelopment Agency v. Gilmore, 38 Cal. 3d 790 (1985). Argued before the California Supreme Court on behalf of property owners in this condemnation case.

People v. Weeren, 26 Cal. 3d 654 (1980). Argued before the California Supreme Court on behalf of State of California in fisheries case.

9th Circuit Court of Appeals

Mr. Briscoe has appeared before the Ninth Circuit Court of Appeals on several occasions. Two recent cases are: *Intertanko v. State of Washington*, 148 F.3d 1053 (9th Cir. 1999), and *Government of Guam v. United States of America*, 179 F.3d 630 (9th Cir. 1999).

California Courts of Appeals

Mr. Briscoe has argued before the California Courts of Appeal on many occasions. Many of the decisions in the cases he has argued have not been published but a number have. Two of the more unusual cases are *People ex rel. State Lands Commission v. Superior Court*, 36 Cal. App. 3d 727 (1973) and *Hitchings v. Del Rio Woods Recreation & Park District*, 55 Cal. App. 3d (1976).

Trial Court Cases

In the federal and state trial courts, Mr. Briscoe has tried condemnation, land-use, environmental, and other property or natural resource cases. In the federal courts, he has represented clients such as the developer of the Squaw Creek Project at North Lake Tahoe, the Vallejo Sanitation and Flood Control District, and First American Title Insurance Company. In state trial courts he has represented such clients as The Grupe Company, Marriott Corporation (in three separate lawsuits regarding the San Francisco Airport Marriott Hotel), the former Leslie Salt Co. (now Cargill, Incorporated), the Sohio Petroleum Company (the final redetermination of interests in the Prudhoe Bay oil field in

Alaska), and W.R. Grace & Company in class action litigation regarding asbestos in California homes.

Administrative Matters

In addition, Mr. Briscoe has represented clients in hundreds of matters before administrative agencies such as the United States Army Corps of Engineers, the San Francisco Bay Conservation and Development Commission, the California Coastal Commission, the Environmental Protection Agency, the California State Lands Commission, the California Water Resources Control Board, and various California Regional Water Quality Control Boards. His clients in these matters have included major real-estate developers, water interests, oil and mining companies, railroads, municipalities, the Ports of Oakland and Richmond, and Oscar winner (Best Actor) Cliff Robertson.

Selected Publications:

Books

- *Tadich Grill: The Story of San Francisco's Oldest Restaurant* (Ten Speed Press, 2002)
- *Surveying the Courtroom* (2d ed., John Wiley & Sons, 1999)
- *Falsework* (1998)
- *Reports of the Special Masters in the Submerged Lands Cases* (Landmark Press, 1993)
- *Surveying the Courtroom* (Landmark Press, 1984)

Articles

- John Briscoe & Peter Prows, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification Is Not in Sight – Still*, 1 Berkeley J. Int'l L. Publicist 18 (2009)
- *Garret McEnerney: California's Greatest Lawyer?*, 15 The Argonaut – Journal of the San Francisco Museum and Historical Society 1 (Summer 2004)
- *The Aboriginal Land Title of the Native People of Guam*, 26 University of Hawai'i Law Review 1 (Winter 2003)
- *A Life of Law and Letters – Louis F. Claiborne, 1927-1999*, XXIII The Supreme Court Historical Society Quarterly 3 (2002)
- *Iraq's Defilement of the Gulf Environment, and the Damages Awards To Come*, in Proceedings of the Twenty Third

Annual Conference, Current Maritime Issues and the International Maritime Organization, London, England (January 7, 1999)

- *The Division of America's Offshore Zones as Between Nation and State*, presented at Implications of Entry into Force of the Law of the Sea Convention for U.S. Ocean Governance, The Ocean Governance Study Group, University of Hawaii, Honolulu, Hawaii (January 9-11, 1995), and published in Implications of Entry into Force of the Law of the Sea Convention for U.S. Ocean Governance, The Ocean Governance Study Group, University of Hawaii (April 1995)

- *Wetlands and Ex-Wetlands in California: The Perils of Insuring Their Titles*, in *Title Insurance, Real Estate Law and Practice* (Course Handbook Series, No. N-412, 1995)

- *The Clean Water and Endangered Species Acts – Reform is in Sight (But of What Kind?)*, San Francisco Business Times (January 24, 1992)

- *The Effect of President Reagan's 12-Mile Territorial Sea Proclamation on the Boundaries and Extra-Territorial Powers of the Coastal States*, University of California (1991), *reprinted in* 2 Territorial Sea Journal 225 (1992)

- Book Review, *The Juridical Bay* by Gail Westerman, 20 Ocean Development and International Law (1989)

- *America's Offshore Zones*, Western Legislative Conference Ocean Resources Committee, Monterey, California (November 11, 1989)

- *Islands in Maritime Boundary Delimitation*, 7 Ocean Yearbook (1988)

- *The Use of Islands in Maritime Boundary Delimitation*, in *Rights to Oceanic Resources* (Dallmeyer and DeVorsey eds.), Dean Rusk Center for International and Comparative Law, University of Georgia (1989) (based on paper presented at a symposium held at the Center on May 2, 1987)

- *Federal-State Offshore Boundary Disputes: The State Perspective, in the Developing Order of the Oceans*, (Krueger and Riesenfeld eds., Law of the Sea Institute 1985)

- *Seabed Mineral Discoveries Within National Jurisdiction and the Future of the Law of the Sea*, 18 University of San Francisco Law Review 433 (1984)

- *Delimitation Questions in United States v. California (1980)*, 25 Journal of Urban and Contemporary Law 203 (1983)
- *Developing Sites Near Water: Running a Government Gauntlet*, Journal of the Industrial Development Research Council 27 (March/April 1983)
- *The Use of Tidal Datums in the Law*, 43 Surveying and Mapping 115 (1983)
- *An Introduction to Civil Procedure and Evidence for the Land Surveyor*, 73 Bulletin of the American Congress on Surveying and Mapping 27 (1981)
- *Legal Problems of Tidal Marshes*, in San Francisco Bay: The Urbanized Estuary, The Pacific Division of the American Association for the Advancement of Science (1979)
- *Gion After Seven Years: Revolution of Evolution?*, 53 Los Angeles Bar Journal 207 (1977)
- Reidel, *37 Photographs and Luros: The Disinterring of Roth*, 6 University of San Francisco Law Review 399 (1972)

Lawrence S. Bazel

Law Practice

Larry Bazel practices in the areas of environmental litigation and administrative proceedings, including matters related to water quality and wastewater discharges, contaminated soil and groundwater, CEQA, water rights, toxic torts, and Proposition 65. He has represented cities, industries, and public-interest groups, and has lectured on TMDLs, stormwater, and other Clean Water Act issues. Before practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency, the National Science Foundation, and municipal governments.

Prior Experience

Partner, Stoel Rives LLP (2001-2005); Partner, Beveridge & Diamond LLP (1991-2000); Associate, Brobeck, Phleger & Harrison (1984-1991); Consulting Hydrologist (1973-1981).

Representative Cases

Water Quality and Clean Water Act

City of Las Vegas. Assists City of Las Vegas and other Southern Nevada municipalities on environmental issues relating to water quality and wastewater discharges, including TMDLs, mathematical modeling, and NPDES permits.

United States v. City of Eureka. Represented ten property owners in defense of claims that the property owners placed fill on tidal flats without a permit from the Corps of Engineers. Creatively resolved without penalties.

BayKeeper v. Tosco. Represented discharger in citizen suit brought to regulate stormwater discharges and air emissions alleged to be point-source discharges. Obtained dismissal on the ground of mootness. After reversal in the Ninth Circuit, settled to client's satisfaction.

CEQA

Concerned Citizens v. City of Stockton. Defending City of Stockton against claims that hiring company to operate city facilities violated CEQA. Prevailed on interlocutory appeal.

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Education

J.D. cum laude, Hastings College of the Law, University of California, 1984; Editor, Hastings Law Journal

Admissions

State Bars of California, Nevada, and District of Columbia

United States Supreme Court

United States Courts of Appeals, Ninth and D.C. Circuits

United States District Courts, Northern and Eastern Districts of California, and District of Nevada

Water Rights

Putah Creek Council v. Solano County Water Agency. Represented Putah Creek Council in suit brought to enforce the public trust doctrine and Fish & Game Code section 5937, which requires dam owners to release water to keep fish below the dam in good condition. Prevailed at trial; favorably settled on appeal.

Proposition 65

People v. Ace Hardware. Represented 40 of 95 defendants in defense of claims that the use of power tools on bricks and other masonry products exposes people to crystalline silica and other carcinogenic substances. Resolved to satisfaction of all clients.

Soil and Groundwater Contamination

Volvo GM Heavy Truck Corporation v. HM Holdings. Represented property owner in private cost-recovery action against former owners for contaminating property with zinc, other metals, and acids. Creatively resolved to client's satisfaction.

Wiegmann & Rose v. NL Industries. Represented former property owner in private cost-recovery action against previous owners for contaminating property with lead, toluene, and other solvents. Prevailed on liability issues, and then settled to client's satisfaction.

E/M Corporation. Represented North Hollywood solvent-using facility in negotiations with Environmental Protection Agency about responsibility for groundwater contamination with TCE and PCE. EPA decided not to sue.

Moore v. Dole Food Company. Represented former owner of real property in defense of claims that it fraudulently failed to disclose presence of underground tank. Negotiated satisfactory settlement with plaintiff and insurers.

Hewlett Packard v. Aydin. Represented former tenant in defense of claims that it breached its lease by contaminating the property with PCBs and solvents. Resolved to client's satisfaction.

E/M Corporation. Represented Mountain View solvent-using facility in negotiations with its neighbor about responsibility for soil contamination along the boundary, and for groundwater contamination downgradient. Negotiated satisfactory cleanup program with the California Regional Water Quality Control Board and settlement agreement with neighbor.

Hazardous Waste

People v. SPS Technologies, LLC. Represented industry sued for allegedly storing and treating cyanide waste in violation of hazardous-waste requirements. Settled to client's satisfaction.

Safe Drinking Water Act

Western Coalition of Arid States (WESTCAS) v. U.S. Environmental Protection Agency. Represented association of water and wastewater agencies in suit over arsenic MCL. Settled to client's satisfaction.

Toxic Torts

DeAnnethe v. National Refractories. Successfully defended manufacturer against claims that airborne metals caused cancer in neighboring resident.

Mullen v. Armstrong World Industries. Successfully defended manufacturer of asbestos-containing products against class action by persons owning homes where asbestos-containing products were present. Action dismissed by trial court; affirmed on appeal.

Lectures and Presentations

Frequent lecturer on stormwater, TMDLs, enforcement, and other Clean Water Act issues; invited to testify about water pollution control before the U.S. House of Representatives, Committee on Public Works and Transportation, Subcommittee on Investigations and Review (1978).

The Clean Water Act at Thirty: A Failure After All These Years? 18 Natural Resources & Environment 46 (2003).

Water-Quality Standards, Maximum Loads, and the Clean Water Act: The Need For Judicial Enforcement, 34 Hastings Law Journal 1245 (1983).

Christian L. Marsh

Law Practice

Christian Marsh advises public and private clients on natural resource and land use matters involving the public trust doctrine, water supply and water quality, boundary disputes, endangered species, California planning and zoning law, and the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Christian conducts trial and appellate-level litigation in each of these areas, as well as in eminent domain proceedings. He regularly represents clients on regulatory and other administrative matters pending before the U.S. Army Corps of Engineers, Fish & Wildlife Service, NOAA Fisheries, Bureau of Reclamation, California Reclamation and Regional Water Quality Control Boards, Department of Fish & Game, State Lands Commission, and local governments.

Before practicing law, Christian served as Special Assistant in the U.S. Department of the Interior, where he advised the Deputy Secretary and the Assistant Secretary for Water & Science on endangered species and water policy, specifically in the Columbia River basin, the California Bay-Delta, and the U.S.-Mexico border region. Christian helped coordinate the Department's implementation of the California Bay-Delta Accord, Central Valley Project Improvement Act, and the North American Free Trade Agreement's Environmental Side Accord.

Prior Experience

Stoel Rives LLP, San Francisco, California (2001-2005); Washburn, Briscoe & McCarthy, San Francisco, California (2000-2001); Semester Intern, Natural Resources Division of the California Attorney General's Office, San Francisco, California (spring 1999); Special Assistant, Offices of the Deputy Secretary and Assistant Secretary for Water & Science, U.S. Department of the Interior, Washington, D.C. (1994-1997); Staff Assistant, White House Office on Environmental Policy, Washington, D.C. (1993-1994).

Representative Cases

Stockton Citizens for Sensible Planning v. City of Stockton. Represent landowner in defense of claim that approval of a shopping center violated CEQA, the California Constitution, and California planning and zoning laws. Prevailed on appeal to the California Supreme Court.

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Education

J.D., Hastings College of the Law, University of California, San Francisco, 2000; Associate Editor, West-Northwest Journal of Environmental Law and Policy (1998-2000); Pace Environmental Moot Court Competition Team Member, Hastings Moot Court Advisory Board (1999-2000)

B.A., Economics & Politics, University of California, Santa Cruz, 1992

Admissions

State Bar of California

United States Court of Appeals, Ninth Circuit

United States District Court, Northern District of California

Morada Area Association v. City of Stockton. Represent developer in defending action under CEQA seeking to halt 2,000-acre subdivision based on alleged impacts associated with groundwater and surface water supplies, including water quality.

Foothill Conservancy v. East Bay Municipal Utility District. Defending against lawsuit brought under CEQA to set aside programmatic Environmental Impact Report (EIR) for long-term water supply management program.

Humboldt Baykeeper v. Union Pacific. Assisted in defense against a citizen suit brought under the federal Clean Water Act and Resource Conservation & Recovery Act (RCRA) to force the clean up and halt the discharge of stormwater from a contaminated site.

Arm v. City of Richmond. Successfully settled CEQA action challenging EIR on major improvement project for the Port of Richmond.

Greenbelt Alliance v. City of Oakley. Represented project applicants in defending a CEQA challenge to approval of the East Cypress Corridor Specific Plan, a residential subdivision proposed in Eastern Contra Costa County.

Santa Cruz Seaside Company v. City of Santa Cruz. Assisted in representing landowner in quiet title action brought concerning ownership of lands that the City and State of California claim are historical tidelands under the equal footing and public trust doctrines.

Robertson v. San Geronimo Valley Planning Group. Successfully settled action to quiet title to appurtenant water rights, including groundwater.

Brentwood Union School District v. Brentwood RE Investors, LLC. Assisted in successful representation of landowner at jury trial in eminent domain proceedings to determine the amount of just compensation under the State and Federal Constitutions.

Bertani v. City of Vacaville. Assisted in defense against CEQA and zoning code challenges to commercial shopping center. Prevailed at trial and on appeal.

Santa Teresa Citizens Action Group v. City of San Jose. Assisted in defense against suit challenging construction of a pipeline for delivery of reclaimed water to a new energy facility brought by a private water company under CEQA, California planning laws, the public trust doctrine, and common law public nuisance. Prevailed at

trial and on appeal.

Representative Projects

Fairfield Station Specific Plan, Fairfield. Represent landowner on mixed-use project. Successfully negotiated a plan for development and preservation of vernal pool habitat for Contra Costa goldfields and California tiger salamander.

Dam Retrofit Project, Contra Costa County. Represent regional utility district on the seismic retrofit of a dam, including issues concerning mitigation for endangered species impacts and 401 water quality certification from the Regional Board.

Sanctuary Master Development Plan, Stockton. Represent private development company on permits and entitlements for a 2,000-acre mixed-use project. Advised the client on all aspects of CEQA compliance and helped evaluate and prepare the EIR and Water Supply Assessment. We are also leading the effort to secure wetlands and endangered species-related permits.

Marina Center Mixed Use Project, Eureka. Represented landowner on 43-acre brownfield mixed-use redevelopment project on permitting and entitlement issues, including certification of the project's EIR. The EIR addressed major issues including climate change, coastal wetlands, site remediation, cultural resources, traffic, and wastewater.

Sutter Pointe Specific Plan, Sutter County. Represented public agency on review and approval of programmatic EIR for a 7,500-acre specific plan, which addressed issues associated with development under a regional multi-species Habitat Conservation Plan (HCP), flood control, water supply, climate change, and regional transportation infrastructure.

East Cypress Corridor Specific Plan, Oakley. Represented developers of a 1,255-acre master-planned community, and lead the efforts to conduct NEPA and CEQA review and to obtain all of the project's federal, state, and local permits associated with surface waters and wetlands, water quality, water supply, and threatened and endangered species (e.g., giant garter snake, delta smelt, Chinook salmon, steelhead, Western burrowing owl, and Swainson's hawk).

Water Diversion Project, Livermore. Represented local agency on negotiations with state and federal wildlife and water quality agencies on renewal of wetland permit, water quality certification, and streambed alteration agreement for in-stream placement of diversion works and diversion of water for a municipal golf course.

Cypress Grove Subdivision, Oakley. Represented a consortium of developers on a residential subdivision project. In addition to assisting with review of the project under CEQA and NEPA, we secured inclusion within the Central Valley Project water contract service area, and concluded necessary consultations with the Service and NOAA Fisheries for several listed species.

Bay Checkerspot Butterfly Habitat, Santa Clara County. Represented a coalition of landowners and developers in the administrative proceedings to designate critical habitat for the bay checkerspot butterfly in Santa Clara County, California, and succeeded in persuading the Service to amend its proposed designation.

Scotts Valley spineflower and polygonum Habitat, Santa Cruz County. Represented landowner in the administrative proceedings to designate critical habitat for the Scotts Valley spineflower and polygonum.

Mare Island Naval Base, Vallejo. Represented city in negotiations with the California State Lands Commission on base closure and reuse and a settlement of State title claims to significant portions of the former naval base under the public trust and equal footing doctrines.

Naval Training Center, San Diego. Represented city on base closure and reuse in negotiations and settlement of title claims by the State of California to former tide and submerged lands.

Professional Activities/Memberships

Member, American Bar Association Section on Environment, Energy & Resources (2000-present); Chair, ABA Endangered Species Committee (2008-present); Member, California Bar Association Section on Environmental Law (2000-present); Associate Member, California Groundwater Resources Association (2006-present); Associate Member, Association of California Water Agencies (2008-present).

Articles

Prairie Dog HCP Upheld: Wildearth Guardians Appeal, ABA Section of Environment, Energy & Resources, Endangered Species Committee Newsletter, Vo1. 12, No. 1 (Jan. 2010); *The Endangered Species Act: It's Time Reasoned Reform*, ABA Trends Newsletter,

Vol. 40, No. 5 (May/June 2009); *Court Denies Rehearing in Casitas—The Government may be Liable for Diversion of Water for Fish*, ABA Water Resources Committee Newsletter, Vol. 11, No. 3 (May 2009); *Interior and Commerce Propose Rule Changes to Streamline Section 7 Consultation Process*, ABA Endangered Species Committee Newsletter, Vol. 10, No. 2 (Aug. 2008); *Supreme Court Limits Agency Duty to Consult under the ESA*, ABA Endangered Species Committee Newsletter, Vol. 10, No. 1 (Sept. 2007); *Trial Court Invalidates Rohnert Park's Water Supply Assessment and Puts Regional Development in Doubt*, San Diego Environmental Professionals Quarterly Newsletter, Vol. 3, Issue 3 (Nov. 2006); *Klamath Project Enjoined From Making Irrigation Diversions,* ABA Endangered Species Committee Newsletter, Vol. 8, No. 2 (June 2006); *Judge Illston Sets Aside Fish And Wildlife Service Biological Opinion And Critical Habitat Designation,* ABA Endangered Species Committee Newsletter, Vol. 8, No. 2 (June 2006) *Water Users Pursue Compensation Under Fifth Amendment for ESA Restrictions Imposed on Water Deliveries*, ABA Endangered Species Committee Newsletter, Vol. 8, No. 1 (Dec. 2005); *Ways to Ensure Water Supplies for New Developments In Areas Dependent on Federal Project Water*, California Real Estate Journal (April 18, 2005); *National Marine Fisheries Service Proposes New Hatchery Policy for Listing Salmon and Steelhead*, ABA Endangered Species Committee Newsletter, Vol. 7, No. 1 (Sept. 2004).

Presentations

Bay-Delta Water Policy and Emerging Science, California Water Law Symposium V, San Francisco, California (Jan. 31, 2009); *Integrating Federal & State Law in Local Land Use Planning: Wetlands, Endangered Species & NEPA*, Lorman Seminar on Zoning, Subdivision and Land Development Law, Stockton, California (Sept. 23, 2008); *Water Rights, Water Supply Planning & CEQA Compliance*, Lorman Seminar on Water Rights Sales & Transfers, San Francisco, California (July 23, 2008); *Hot CEQA Litigation*, California Bar Association, Environmental Law Section Spring Roundtables, San Diego, California (June 27, 2008); *Wetlands and Wildlife – Navigating Clean Water and Endangered Species*, Lorman Advanced Zoning and Land Use Seminar, Redding, California (March 8, 2007); *Water Supply Planning, CEQA Compliance & Land Use Litigation*, Lorman Zoning & Land Use Seminar, Stockton, California (Nov. 1, 2006); *Water Supply Planning: Too Little, Too Much*, California Bar Association, Environmental Law Section Spring Roundtables, Monterey, California (June 10, 2006); *Western Water Law*, Environmental Law Institute, Western Boot Camp on Environmental Law, San Francisco, California (March 28, 2006); *Permitting and the Federal*

Endangered Species Act, American Planning Association, National Planning Conference, San Francisco, California (March 22, 2005).

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GARRITY AND KNISELY
OVERVIEW OF MILITARY BASE CONVERSION PRACTICE

Garrity and Knisely is a law firm established in 1990 by David S. Knisely and Robert P. Garrity. Its offices are located in downtown Boston at 21 Merchants Row. The law firm of ***Garrity and Knisely*** has developed extensive expertise in negotiating the transfer of military bases scheduled to be closed or realigned, and in the implementation of base reuse plans. ***Garrity and Knisely*** has provided legal services to public agencies, local redevelopment authorities and, in some cases, developers at the following installations:

- **Lone Star Army Ammunition Plant, Bowie County, Texas**

The Lone Star Army Ammunition Plant was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by the Red River Redevelopment Authority (the "RRRA"), the designated local redevelopment authority for Lone Star, to provide ongoing legal support to the RRRA on all base closure-related issues. Garrity and Knisely assisted in structuring a "below fair market value" economic development conveyance ("EDC") for an 8700 acre portion of Lone Star, including all infrastructure and utility systems, combined with public sale by the Army of surplus parcels on the Red River Army Depot. Mr. Knisely assisted in the negotiation and preparation of the EDC Memorandum of Agreement ("MOA"), Deed and other conveyance documentation in support of this transaction, which was concluded in September 2010.

Additional services to be provided by Garrity and Knisely will include legal support in the negotiation of an environmental services cooperative agreement with the Army and a companion Cleanup Agreement and Compliance Plan with the Texas Commission on Environmental Quality.

- **Newport Chemical Depot, Vermillion County, Indiana**

The Newport Chemical Depot was selected for closure in the 2005 round of base closures. Garrity and Knisely was selected by the Newport Chemical Depot Reuse Authority ("LRA"), the designated local redevelopment authority for the Depot, to assist in the preparation of the Homeless Assistance Submission for submission to the Department of Housing and Urban Development ("HUD").

Services provided by Garrity and Knisely have included review and oversight of the outreach process for homeless providers and public agencies, preparation, as needed, of legally binding agreements ("LBAs") with homeless providers selected by the LRA, coordination of the approval process with HUD staff and assistance in negotiation with the Army of property disposition methods.

Garrity and Knisely is currently assisting the LRA in the negotiation of a "below fair market value" economic development conveyance ("EDC") for the entire facility, on a

"shared proceeds" basis, including the preparation of an EDC Memorandum of Agreement ("MOA") and all related conveyance documents. It is currently anticipated that the first phase of this transfer will occur in early 2011.

- **Fort Monmouth, Eatontown, Tinton Falls and Oceanport, New Jersey**

Fort Monmouth was selected for closure in the 2005 round of base closures. Garrity and Knisely, in partnership with McManimon and Scotland, was retained by the Fort Monmouth Economic Revitalization Planning Authority ("FMERPA") and the New Jersey Attorney General to provide a broad range of base closure or BRAC-related legal services.

Garrity and Knisely assisted FMERPA in undertaking required outreach in support of the preparation of the FMERPA Application for submission to the Department of Housing and Urban Development ("HUD"), and in the drafting of the Homeless Assistance Submission. Garrity and Knisely also prepared and negotiated legally binding agreements with selected homeless providers. The FMERPA Application, including the Redevelopment Plan and Homeless Assistance Submission, has been submitted to HUD.

Garrity and Knisely is currently assisting the staff of the Fort Monmouth Economic Revitalization Authority ("FMERA"), the implementation LRA and successor to FMERPA, in the development of a property disposition plan to be negotiated with the Army. This plan will include an economic development conveyance ("EDC") for all or portions of the installation.

- **Fort McPherson, Atlanta, Georgia**

Fort McPherson was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Fort McPherson Planning Local Redevelopment Authority ("MPLRA"), the designated local redevelopment authority for Fort McPherson, to provide a wide range of BRAC-related legal services.

Initial services provided by Garrity and Knisely included assistance in the preparation of the MPLRA Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"), preparation and negotiation of legally binding agreements ("LBAs") with homeless providers and the development of a property disposition strategy for negotiation with the Army. Garrity and Knisely is currently concluding negotiations with HUD staff as required to secure approval of the MPLRA Homeless Assistance Submission, and will coordinate LBA requirements with elements of the property disposition methods being negotiated with the Army.

The next phase of legal services to be provided by Garrity and Knisely will include assistance in the completion of an economic development conveyance ("EDC") application and negotiation of final EDC terms with the Army. It is currently anticipated that final conveyance terms will include a "below fair market value" EDC for a major portion of the installation, combined with public sale by the Army of certain agreed upon

parcels.

- **Kansas Army Ammunition Plant, Parsons, Kansas**

The Kansas Army Ammunition Plant was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Great Plains Development Authority (the "GPDA"), the designated local redevelopment authority for the Kansas Army Ammunition Plant, to provide ongoing legal support to the GPDA in structuring the early transfer of a major portion of the 13,000 acre facility to the GPDA via an economic development conveyance ("EDC"). The EDC includes necessary equipment, utility systems and rail infrastructure to support the development of the Great Plains Industrial Park, and the EDC Memorandum of Agreement ("MOA") includes a "shared proceeds" provision providing for below fair market value payments over a ten year period as development progresses. The first phase of the transfer was concluded in late 2009.

Services provided by Garrity and Knisely have included legal support in the negotiation of the EDC and the EDC MOA in coordination with the conveyance of other portions of the facility to an ammunition production contractor and the State of Kansas, and in the negotiation of the transfer of environmental permits required for the completion of the environmental cleanup of the entire facility.

- **Fort Monroe, Hampton, Virginia**

Fort Monroe was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Fort Monroe Federal Area Development Authority ("FMFADA"), the designated local redevelopment authority for Fort Monroe, to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included assistance in the integration of the state, local and homeless provider screening process into the base reuse planning process and the development of required documentation in support thereof, including the drafting of relevant portions of the FMFADA Application for submission to the Department of Housing and Urban Development ("HUD") and legally binding agreements with homeless providers. Garrity and Knisely has also provided assistance in structuring early transfer and cleanup privatization of the entire facility, including coordination with the Commonwealth of Virginia on the exercise of its reversionary interest in a portion of the property and the structuring of an economic development conveyance ("EDC") for the balance of the installation.

- **Brunswick Naval Air Station, Brunswick, Maine**

Brunswick Naval Air Station ("BNAS") was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Brunswick Local Redevelopment Authority ("BLRA") to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included close consultation on the

structuring of the state, local and homeless provider outreach and screening process and integration of screening requirements and the mechanics of the various property disposition methods into the reuse planning process. Assistance was also provided in the preparation of the BLRA Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"), the negotiation of legally binding agreements with homeless providers and the selection of property disposition methods in support of the implementation of the Redevelopment Plan. HUD approval of the BNAS Redevelopment Plan and Homeless Assistance Submission was received in 2009, with the concurrence of the Navy.

Garrity and Knisely assisted the Midcoast Regional Redevelopment Authority, successor to the BLRA, in the final selection of property disposition methods and participated in the preparation of the Economic Development Conveyance Application ("EDC") currently under review by the Navy. The initial transfer of property at BNAS is scheduled to take place in November of 2010.

- **Concord Naval Weapons Station, Concord, California**

The Concord Naval Weapons Station was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the City of Concord, the designated local redevelopment authority for the former weapons station, to provide ongoing legal support to the City regarding all aspects of the base closure process. To date, this support has included assistance in negotiations with the Navy in the coordination and resolution of federal screening requests, assistance in structuring the state, local and homeless provider screening process and drafting of legally binding agreements with homeless providers, the development of a property disposition strategy to be negotiated with the Navy, which will include an economic development conveyance and various public benefit conveyances ("PBCs"), and guidance regarding the establishment and focus of the BRAC Cleanup Team, in support of expediting the environmental documentation required for property disposition.

- **Buckley Annex, Denver, Colorado**

Buckley Annex at the former Lowry Air Force Base was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Lowry Redevelopment Authority ("LRA"), the designated local redevelopment authority for the Buckley Annex, to provide a broad range of BRAC-related legal services.

Initial services provided by Garrity and Knisely included oversight of the outreach process to homeless providers and public agencies in support of the development of the Redevelopment Plan and Housing Assistance Submission for submission to the Department of Housing and Urban Development ("HUD"), drafting and the negotiation of the legally binding agreement ("LBA") with the homeless provider selected by the LRA, coordination of the HUD approval process with HUD staff, and negotiation with the Air Force of final property disposition methods, which will include an economic development conveyance.

- **Muller Army Reserve Center, Bronx, New York**

The Muller Army Reserve Center, a one (1) acre Army reserve center, was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by the New York City Economic Development Corporation, as a member of the Matrix Design Group Team, to prepare the Redevelopment Plan and Homeless Assistance Submission for submission to the Department of Housing and Urban Development. Additional services to be provided by Garrity and Knisely include the preparation of legally binding agreements ("LBAs") to be negotiated with homeless providers, and the negotiation of property disposition methods with the Army.

- **Brittin Army Reserve Center, Pennsauken Township, New Jersey**

The Brittin Army Reserve Center, a six (6) acre Army reserve center, was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by Pennsauken Township, the designated local redevelopment authority for the Brittin Army Reserve Center, to design and complete the final stages of the outreach process to homeless providers and public agencies required in the preparation of the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"). Additional services provided by Garrity and Knisely included the negotiation of a legally binding agreement ("LBA") with the homeless provider selected by the Township, preparation of the revised homeless assistance submission, assistance in the preparation of the application for a public benefit conveyance to the Federal Emergency Management Agency for use of the existing buildings on-site as the headquarters and training facility for the Township Office of Emergency Management and Fire Department, coordination of the approval process with HUD staff and negotiation of final property disposition methods with the Army. HUD approval of the Redevelopment Plan and Housing Assistance Submission was received by the Township in June of 2009, with the concurrence of the Army.

- **Army Garrison – Selfridge, Sebille Manor Housing Area, Chesterfield Township, Michigan**

The Sebille Manor Housing Area was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by Chesterfield Township Local Redevelopment Authority to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included assistance in structuring the outreach process for homeless providers and potential recipients of public benefit conveyances, initial negotiations with the Department of Housing and Urban Development ("HUD") regarding homeless submission issues and the integration of Army requirements and notices of interest received during the state, local and homeless provider screening process into the reuse and property disposition planning process.

Additional services have included oversight of the preparation of the Chesterfield Township Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to HUD, including the negotiation of legally binding agreements with homeless providers and the negotiation with the Army of final property disposition methods. HUD approval of the Township Redevelopment Plan and Homeless Assistance submission was received in 2009, with the concurrence of the Army.

- **Lowry Air Force Base, Denver and Aurora, Colorado**

Garrity and Knisely represented the Lowry Economic Redevelopment Authority (the "LRA") in negotiations with the Air Force regarding the restructuring of the EDC agreements that were originally negotiated in 1995. Garrity and Knisely also represented the LRA in negotiating the transfer documents for the first Air Force early transfer combined with the privatization of the environmental clean-up at Lowry. The amount negotiated to complete the clean-up was over thirty-nine million dollars. The required early transfer and privatization documents included an Environmental Services Cooperative Agreement between the Air Force and the LRA and a Consent Agreement with the Colorado Department of Public Health and Environment. Garrity and Knisely also represented the LRA in negotiating the second phase of the privatized clean-up.

- **K.I. Sawyer Air Force Base, Gwinn, Michigan**

Garrity and Knisely represented Marquette County, Michigan (the "County") in the transfer from the Air Force of over 5,000 acres of land, including all buildings and utility systems, at the former K.I. Sawyer Air Force Base in the Upper Peninsula of Michigan. The transfer plan included a public benefit conveyance of the existing airport facility, and a "no-cost" EDC for the remaining land, buildings and utility systems. The County also plans to privatize the telephone, water, wastewater and electric systems.

Services provided by Garrity and Knisely included negotiation of EDC and Airport PBC transfer timetables; review of the environmental clean-up process to ensure transfer timetables were met and transfer parcels are marketable; preparation and negotiation of transfer documents, including the Airport PBC application, the purchase Memorandum of Agreement, lease termination documents, deeds, a Lease in Furtherance of Conveyance, bills of sale and an extended caretaker agreement; and structuring of the privatization plan for the utility systems.

- **Fort Devens, Ayer, Harvard and Shirley, Massachusetts**

Garrity and Knisely represented the Massachusetts Development Finance Agency (the "MDFA") in connection with the acquisition and redevelopment of Fort Devens, an Army installation which was transferred to the MDFA in May of 1996. The transfer of Fort Devens, which was accomplished as an economic development conveyance ("EDC"), is one of the largest transfers under the authority of the Base Realignment and Closure Act ("BRAC") completed by the Department of the Army to date.

Services provided by Garrity and Knisely included negotiation of the final EDC transfer terms; active participation with the BRAC Clean-up Team in targeting the environmental clean-up in order to accelerate deed transfers and to ensure the marketability of transferred parcels; securing findings of suitability to transfer and lease; structuring MDFA input into the NEPA process; oversight of the property screening process and assisting in the negotiation of legally binding agreements with homeless providers and HUD approval of the Redevelopment Plan; preparation of transfer documents including interim leases, the purchase Memorandum of Agreement, deeds and leases in furtherance of conveyance; assisting in the privatization of the utility systems; preparation of transfer documents and legal opinions required for the sale of parcels by the MDFA to private end-users; and drafting of legislation that established a local governance structure for Fort Devens.

More recently, Garrity and Knisely provided legal support to MDFA in the exchange of a parcel of land owned by the Army for construction services provided by the MDFA.

- **Red River Army Depot, Bowie County, Texas**

Garrity and Knisely represented the Red River Redevelopment Authority (the "RRRA") in the transfer from the Army of over 700 acres of land, including buildings and utility systems, at the Red River Army Depot. The transfer of over 500 acres of land, including an early "horizontal" conveyance of a major industrial facility, has been completed. The conveyance and privatization of all utility systems (gas, electric, steam, water, wastewater, industrial wastewater) has also been finalized.

Services provided by Garrity and Knisely included assistance in the final preparation of the Redevelopment Plan; negotiation of the final EDC transfer terms for land, buildings and utility systems; review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables were met and the transferred parcels are marketable; review of the Environmental Assessment; assistance in the preparation of the legal components of the application for an EDC; preparation and final negotiation of transfer documents, including interim leases, the purchase Memorandum of Agreement, sale-leaseback agreements, deeds and service and utility agreements; and structuring of the privatization of the utility systems.

Garrity and Knisely also completed negotiations with the Army under the "no-cost" EDC statute reducing the RRRA's purchase price to zero dollars.

- **Morgan's Point, Bermuda**

Garrity and Knisely served as special counsel to the Bermuda Land Development Company with regard to the environmental clean-up and redevelopment of the former United States Naval Base at Morgan's Point, Bermuda. In this capacity, Garrity and Knisely assisted the Bermuda Land Development Company and the Government of Bermuda in the development of transfer documents and an environmental clean-up and covenant not to sue program for Morgan's Point and three other closed United States and Canadian naval bases in Bermuda.

- **Detroit Arsenal Tank Plant, Warren, Michigan**

Garrity and Knisely represented the City of Warren in the fast-track conveyance of the 153 acre former tank production facility to the City. In this capacity, Garrity and Knisely assisted in the preparation of the City's Redevelopment Plan and EDC application which was submitted to the Army in July of 1997, and concluded EDC negotiations and transfer documentation in November of 1997, allowing the City to meet its conveyance deadline of December 31, 1997. Meeting this deadline enabled the City to maintain the installation's Renaissance Zone status under Michigan Law, ensuring critical development incentives for the site.

Services provided by Garrity and Knisely included negotiation of the accelerated EDC transfer timetable and price, and the preparation of transfer documentation including deeds, the purchase Memorandum of Agreement and a Lease in Furtherance of Conveyance.

- **Seneca Army Depot, Seneca County, New York**

Garrity and Knisely represented the Seneca County Industrial Development Authority (the "IDA") in the transfer of over 10,000 acres of land, including buildings and utility systems, to the IDA and selected state agencies. The transfer plan at Seneca includes the interim lease of the 160 acre North Depot for institutional use, the phased transfer to the IDA, by deed, of housing, industrial facilities and all utility systems, and public benefit conveyances to state agencies for conservation and prison uses.

Services provided by Garrity and Knisely included negotiation of the final "no-cost" rural EDC transfer terms; review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables were met and the transferred parcels are marketable; review of the Environmental Impact Statement; assistance in the preparation of the legal components of the application for a rural EDC; preparation and final negotiation of transfer documents, including interim leases, the purchase Memorandum of Agreement, deeds and service and utility agreements; and structuring of the transfer and privatization of the utility systems.

- **Savanna Army Depot, Savanna, Illinois**

Garrity and Knisely represented the Jo-Carroll Depot Local Redevelopment Authority in the transfer from the Army of over 3,000 acres of land, including buildings, utility systems, and rail infrastructure, at the Savanna Army Depot. The transfer plan at Savanna currently includes the early interim lease of selected industrial and rail-related facilities, and the phased transfer by deed of the entire 3,000-acre parcel.

Services being provided by Garrity and Knisely included assistance in the preparation of the final Redevelopment Plan; the review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables are met and the transferred parcels are marketable; review of the Environmental Impact Statement; preparation of transfer documents, including interim leases, the purchase

Memorandum of Agreement, easement agreements, deeds and service and utility agreements; and structuring of the transfer and privatization of the utility systems.

- **Fleet Industrial Supply Center Oakland, Oakland, California**

Garrity and Knisely represented the Port of Oakland (the "Port") in successfully structuring and implementing the early transfer and privatization of the environmental clean-up of the 531 acre Fleet Industrial Supply Center Oakland ("FISCO"). This early transfer was accomplished in seven months.

Garrity and Knisely negotiated and prepared key transaction documents including the Finding of Suitability for Early Transfer ("FOSET") and the Environmental Services Cooperative Agreement between the Navy and the Port. In addition, Garrity and Knisely prepared and assisted in the negotiation of the Consent Agreement between the Port and the California Department of Toxic Substances Control, which agreement governs the completion by the Port of the environmental clean-up of FISCO.

- **Fort McClellan, Anniston, Alabama**

Garrity and Knisely represented the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority ("JPA") in the transfer from the Army of over 9,000 acres of land, including buildings and improvements. Garrity and Knisely assisted in the preparation of the "no-cost" EDC application and negotiated the purchase Memorandum of Agreement with the Army. Garrity and Knisely negotiated and drafted a Master Lease covering over 2,000 acres of land and 800 buildings.

Garrity and Knisely also represented the JPA in the early transfer and clean-up privatization of 4,800 acres. The funding amount to be provided by the Army for the first phase of the clean-up privatization is forty-eight and one-half million dollars. In addition, this precedent setting clean-up privatization includes significant amounts of unexploded ordnance. The documents required to complete this transaction included an Environmental Services Cooperative Agreement between the Army and the JPA and a Clean-up Agreement between the State of Alabama and the JPA. Garrity and Knisely also played an instrumental role in negotiating environmental insurance policies on behalf of the JPA. Garrity and Knisely will continue to represent the JPA through future phases of the clean-up.

- **Fitzsimons Army Medical Center, Aurora, Colorado**

Garrity and Knisely represented the City of Aurora (the "City") in the structuring and implementing an early transfer and clean-up privatization of a 22 acre parcel at the former Fitzsimons Army Medical Center. This parcel contains three landfills and will be the site of a major access road serving the medical center redevelopment being undertaken by the Fitzsimons Redevelopment Authority. Garrity and Knisely negotiated key transaction documents, including the Environmental Services Cooperative Agreement between the Army and the City and the Consent Agreement between the Colorado Department of Public Health and Environment and the City.

- **Rough and Ready Island, Stockton, California**

Garrity and Knisely represented the Port of Stockton (the "Port") in the successful negotiation of the early transfer, including the privatization of the environmental clean-up, of 500 acres of land critical to the Port's redevelopment plans. The funding amount for the environmental clean-up was over twenty-three million dollars. The disposition authority utilized to accomplish this early transfer was a "Port Facility" public benefit conveyance. Documents required to complete the transaction included an Environmental Services Cooperative Agreement between the Port and the Navy, a Consent Agreement among the Port, the California Department of Toxic Substances Control and the Regional Water Quality Control Board, and a Deed approved by the Navy and the Maritime Administration.

- **Naval Ordnance Station Louisville, Louisville, Kentucky**

Garrity and Knisely represents Titan Research and Development, LLC ("Titan"), the Master Developer selected by the Louisville/Jefferson County Redevelopment Authority ("LJCRA"), to oversee the transfer and redevelopment of the Naval Ordnance Station Louisville. In this capacity, Garrity and Knisely worked closely with the LJCRA in successfully completing the early transfer of the entire 141 acre facility to the LJCRA through "no-cost" EDC authority. Transaction documents included the transfer Memorandum of Agreement, Deed and leaseback to the Port Hueneme Detachment in support of Navy contractors on site.

- **Roosevelt Roads, Commonwealth of Puerto Rico**

Garrity and Knisely currently represents the Commonwealth of Puerto Rico in negotiations with the Navy regarding the environmental clean-up, early transfer and disposition of the entire 8,600 acre facility. The closure of Roosevelt Roads was authorized by special legislation in 2003, and the Navy has touted the closure of Roosevelt Roads as its model for future base closures.

Garrity and Knisely assisted the Commonwealth in the negotiation of a disposition strategy with the Navy that includes a unique combination of public sales, public benefit conveyances, conservation conveyances and the focused use of Economic Development Conveyance authority. Garrity and Knisely worked closely with the Commonwealth, the Navy and EPA in the design of a streamlined RCRA process to govern the remainder of the required environmental clean-up and the implementation of a privatized "early" transfer of the airport and port facilities.

- **Fort Sam Houston, San Antonio, Texas**

Garrity and Knisely represented Orion Partners in the long-term lease and redevelopment of three underutilized buildings on the installation, containing over 450,000 square feet. Garrity and Knisely prepared and negotiated the required long-term master leases under the Army's Enhanced Use Leasing Program, which leases were executed in June of 2001. Garrity and Knisely also prepared and assisted in the negotiation of subleases between Orion and various Army Commands.

In contrast with the above-described projects, Fort Sam Houston is an active Army installation. This long-term leasing action was taken by the Army under the authority of 10 U.S.C. Sec. 2667, and represents the new Enhanced Use Leasing initiative on the part of the Department of Defense to facilitate the private redevelopment of underutilized facilities at active installations.

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Services provided by Garrity and Knisely regarding military base closure and redevelopment include:

(1) preparation of homeless assistance submission documentation and legally binding agreements with homeless providers;

(2) negotiation and drafting of redevelopment plans and transfer documents, including interim leases, leases in furtherance of conveyance, purchase agreements, easement agreements, caretaker agreements, sale-leaseback agreements, findings of suitability to lease and transfer, and deeds;

(3) preparation and negotiation of documents required for "early" transfers and privatization of environmental clean-ups, including findings of suitability for early transfer ("FOSET"), environmental response obligation addendums, consent agreements, and environmental services cooperative agreements;

(4) negotiation of Economic Development Conveyances ("EDCs"), with and without consideration, and negotiation of transfers through other disposition mechanisms, including public and negotiated sales, and public benefit conveyances;

(5) representation of developers in the acquisition of development rights from local redevelopment authorities, and the subsequent redevelopment of the subject facilities;

(6) oversight and strategic advice regarding the various elements of the federal real property screening process;

(7) negotiation of HUD approval of redevelopment plans;

(8) negotiation with the military departments and federal and state regulators on the timing and focus of hazardous waste and unexploded ordnance clean-up to ensure compatibility with community reuse plans, with special expertise in cases where installations are federal superfund sites;

(9) negotiation of the transfer and privatization of utility systems;

(10) strategic advice and analysis of options regarding governing structures for local redevelopment authorities;

(11) oversight and strategic advice regarding the completion of environmental impact statements and environmental assessments under the National Environmental Policy Act ("NEPA"), and integration of state counterparts of NEPA into the NEPA process, in order to ensure timely completion that allows for the implementation of locally-approved reuse plans;

(12) preparation and negotiation of basewide covenants not to sue under federal and state superfund statutes;

(13) negotiation of the transfer of land and buildings at closing and realigned installations to industrial and commercial end-users;

(14) negotiation of leases and subleases under the "Enhanced Use Leasing" program;

(15) negotiation of exchange agreements under military construction and reserve authorities; and

(16) negotiation and implementation of programmatic agreements under Section 106 of the National Historic Preservation Act.

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DAVID S. KNISELY **Background Information**

David S. Knisely is a partner in the law firm of Garrity and Knisely. He serves as lead counsel for the firm in the representation of municipalities, lenders, developers, utility providers and local redevelopment authorities at military installations scheduled to be closed or realigned.

Mr. Knisely is a nationally recognized expert regarding the completion of property transfers at closing and realigning military installations. He has expedited the negotiation of economic development conveyance, public sale and public benefit conveyance terms, and prepared transfer documents, at closing Army, Air Force and Navy installations. He has also negotiated ground-breaking enhanced use leases and exchange agreements with the Army at operating installations.

Mr. Knisely has a great deal of experience in matters related to managing the risks associated with the environmental clean-up at closing and realigning installations. He has been involved in coordinating clean-up and redevelopment priorities, and has successfully negotiated consent agreements, covenants not to sue, findings of suitability to transfer, environmental services cooperative agreements and related documents with federal and state environmental agencies and military departments. He has also completed the negotiation of clean-up privatization and early transfer agreements at closing Army, Air Force and Navy installations.

Mr. Knisely has made numerous presentations to groups and professional associations regarding the transfer, environmental clean-up and utility privatization at military installations scheduled to be closed or realigned.

Mr. Knisely is a member of the Massachusetts Bar Association, the Massachusetts Conveyancers Association and the Association of Defense Communities.

Mr. Knisely obtained his Bachelor of Arts degree, magna cum laude, from Case Western Reserve University in 1972 and a Masters degree in Public Administration from Harvard University in 1974. He obtained his Juris Doctor degree from Suffolk University and was admitted to the Massachusetts Bar in 1981.

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Dongell Lawrence Finney is a mid-sized firm with twenty-nine (29) attorneys and sixteen (16) additional support staff. The Firm's strong litigation, government regulatory and transactional law practices service small, emerging growth and large public entities and businesses. The Firm has offices in Los Angeles, Sacramento, Las Vegas and Washington DC.

The Firm has substantial experience in representing various clients in matters involving state and federal Superfund (HSAA and CERCLA). These matters typically involve both defending against such claims, as well as pursuing cost allocation against those responsible for the contamination at issue. Below are several cost recovery actions the Firm is currently negotiating or has recently handled:

- The Firm currently represents a Northern California County in connection with a multi-party CERCLA suit brought by the United States concerning a former municipal landfill site which operated from the early 1950's to the early 1970's. Experts retained by the Firm have conducted extensive investigation at the site in order to develop a cost effective remedial plan. This case is currently being mediated.

- The Firm currently represents an international aerospace and defense systems company and a stainless steel tubing manufacturer in connection with claims brought by a Southern California Water District for response costs and damages pursuant to the California Superfund Act for alleged releases of volatile organic compounds from its facilities to groundwater. This District is in the early stages of implementing an approximate $100 million remediation and containment plan to address groundwater contamination over an approximate 11 square mile area in the cities of Fullerton and Anaheim.

- The Firm, on behalf of a large manufacturer of high-temperature alloys and titanium metals, is currently pursuing a cost recovery action against several PRPs for their alleged involvement in the contamination of certain property located in Los Angeles, California. Specifically, the Firm's client is seeking reimbursement of its response costs from several historical PRPs, including prior owners and operators, such as Burlington Northern Railroad and United Pacific Railroad in connection with their spur track operations where releases of contamination took place.

- The Firm, on behalf of a large broker and processor of ferrous and nonferrous scrap metals, stainless steel, and high-temperature alloys, recently prosecuted a cost recovery action against several PRPs responsible for historical PCB contamination of property. Locating the former employee and developing his testimony proved vital to proving our client's case, which led to the recovery of $2.8 million from these PRPs – an amount sufficient to cover this client's total cleanup costs. Significantly, this was one of only two environmental cases featured in *Settlement & Verdicts*, Year-in-Review edition, a publication of the *Los Angeles Daily Journal*. Notably, we were recognized for our creativity and persistence in investigating and developing evidence of contamination activities that occurred over 50 years ago.

- The Firm recently represented historical operators of a bulk loading facility at the Port of Los Angeles against environmental cleanup claims brought by an environmental non-profit group and the Port of Los Angeles. The Port claimed that its cleanup costs for dredging the contamination allegedly caused, in part, by our client were in excess of $50 million. By successfully challenging the remedial approach and aggressively prosecuting historical PRPs, the Firm was able to reach a settlement that only required our client's insurers to make a $1 million contribution despite that our client was the Port's main target for cost recovery.

- The Firm recently represented a former San Diego Unified Port District ("Port") tenant in connection with a cost recovery action brought by the Port relating to the remediation of copper contamination. This matter was successfully mediated for a small percentage of the Port's claimed remediation costs.

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Environmental Law Practice

As an Attorney with Dongell Lawrence Finney LLP, Mr. Swickard serves clients in all aspects of his nationwide practice of real estate and environmental law, including an extensive record of the Brownfields redevelopment of former DOD bases, defense contractor facilities and large and small contaminated properties through successfully negotiating agreements, orders and cleanup criteria with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities, and environmental regulatory compliance/enforcement defense in the areas of chemicals, pesticides, toxics and hazardous waste, air quality and greenhouse gas emissions, water rights/quality and legislative and regulatory advocacy. Mr. Swickard's clients include FedEx Ground, AIG/Chartis, AMB Properties, Tremont Fertilizer Group, United Alloys, Agri-Chem, and Whittaker Bermite.

Office of Chief Counsel/Director Cal/EPA DTSC

Appointed by Governor Schwarzenegger in 2004 as Chief Counsel of the Department of Toxic Substances Control, and in 2006 as Department Director, Mr. Swickard oversaw the Department's Office of Legal Counsel of 24 attorneys and numerous support staff, the Criminal Investigation Branch of 10 Peace Officers, a Forensic Investigation unit, and the Department's CEQA and Regulations unit. As Chief Counsel, in addition providing ongoing legal advice to the Director and Department programs, Mr. Swickard negotiated Voluntary Cleanup Agreements and Redevelopment Agreements associated with the Cleanup of Fort Ord Army Base, Tustin Naval Air Station, Mare Island Naval Base, BKK Hazardous Waste Landfill etc. He also implemented the Governor's AB 389 Brownfields Remediation Program jointly with the SWRCB to facilitate remediation and reuse of brownfields sites. Mr. Swickard negotiated the final model Joint Consent Decree language between the State of California and the USEPA and USDOJ for joint federal/state superfund sites.

Judicial Externships

Before commencing his legal practice, Mr. Swickard served as a Judicial Extern for the Honorable Edward C. Reed Jr., Senior Judge, United States District Court, District Of Nevada, and for the Honorable Gregory G. Hollows, Chief Magistrate Judge, United States District Court, E.D. Cal.

Education

Mr. Swickard received his Juris Doctor *Cum Laude* from the University of the Pacific, McGeorge School of Law, where he received the Traynor Honor Society Award for Academic Excellence. Mr. Swickard double majored in Agricultural Business Management and Biochemistry in receiving his Bachelor of Science Degree from the University of California, Davis, where he also received the Regents Scholarship Award for Academic Excellence.

Client Work Undertaken (Partial Listing)

Real Estate/Brownfield Redevelopment

- Brownfield redevelopment of former DOD bases including Fort Ord Army Base, Tustin Naval Air Station and Mare Island Naval Base, defense contractor facilities including Whittaker Bermite Santa Clarita and large and small contaminated properties including BKK Hazardous Waste Landfill, through successfully negotiating agreements, orders and cleanup criteria with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities;
- Negotiated multiple Dept. of Defense Materials Base Cleanup cost allocation settlements with US DOD;
- Negotiated Cal/EPA AB 389 Immunity Agreements, Voluntary Cleanup Agreements and Land Use Covenants for redevelopers with USEPA, USDOJ, DTSC and Regional Water Quality Control Boards on Redevelopment projects throughout California;
- Provided Legal Due Diligence Analysis for sale of potentially contaminated properties.

Environmental Regulatory Compliance and Litigation

- Provide defense to local, state DTSC, RWQCB, CARB and federal USEPA, USDOT government enforcement actions and Notices of Violation of environmental laws for FedEx Ground, Pool Corp., SCP Distributors LLC, Sierra Chemical and CPT Transport Inc., etc.;
- Provided legal counsel oversight to the cleanup of USEPA Superfund sites, DTSC and RWQCB California sites as well as contaminated sites in Hawaii, Montana, Oklahoma, Nevada, Oregon, Washington and the Nation of Bermuda etc.;
- Provided government regulatory compliance counsel for businesses producing chemicals, fertilizers, pesticides, toxics and hazardous wastes;
- Provided government regulatory counsel for CWA, EPA and Federal and State mining, timber harvesting and livestock grazing compliance;
- Provided legal oversight for challenge of EPA Superfund RI/FS on Sulpher Bank Mercury Mine;
- Negotiated Settlement with USEPA over CWA violation in Kanehoe, Hawaii and provided legal oversight of site remediation and restoration;
- Provided legal assistance for removal and cleanup of multiple UST's and obtained reimbursement from California's UST Fund for cleanup costs;
- Provided defense trial counsel for complex environmental, business and regulatory cases.

Energy Resource Development and Regulatory Compliance

- Provided counsel for geothermal, hydropower and natural gas generating facility project siting;
- Drafted FERC Licensing Application for PacifiCorp Klamath Project;
- Lead Counsel for Power Contract Dispute litigation;
- Provided Counsel for Renewable energy source permitting and licensing.

Mining Regulation and Remediation

- Served as Arbitration Panelist Judge for large Northern California mining contract dispute between Landowner and Mining company;
- Negotiated contracts for split-estate mineral rights access and development between landowners and mining companies.

Litigation

- Federal Administrative Bench Trial on NEPA, FLPMA, NFMA claims;
- Lead Counsel for two CCP 806 State Court Contract Validation Bench Trials;
- Extensive Motion Practice including Drafting and Hearings for Motion for Summary Judgments;
- Extensive Deposition Practice
- Multiple Administrative Hearings before various Federal and State ALJ's and the SWRCB;

Water Quality and Quantity

- CWA 401 Water Quality Certifications;
- Administrative Appeals of WDR's, CAO's and ACL's before the SWRCB;
- Stormwater Discharge Permitting; NPDES Permitting;
- Water rights determinations for Surface streams, Riparian River rights, Groundwater rights,
- Drafted Complaint to SWRCB for Waste and Unreasonable Use of Water,
- Determine Groundwater Banking and Groundwater Recharge Rights and negotiate agreements.

Endangered Species/Wetlands

- Negotiated US Army Corps of Engineers section 404 Dredge and Fill Permits;
- Negotiated mitigation for Endangered Species etc. for developers under NEPA and CEQA;
- Authored Draft comments on Listing and assist client with Habitat Conservation Plan and comments for Federal Listing process; Applications for Streambed Alteration Permits.

Transactional Contract Drafting/Negotiation

- MID Root Creek, Multi-Public Agency Agreement;
- Lewis Homes Drainage Improvement Agreement with Bureau of Reclamation;
- Multiple Real Estate Purchase and Sale Agreements;
- Multiple Commercial Retail and Office Lease Agreements;
- Multiple Litigation Settlement/Release Agreements;
- Multiple Environmental Cleanup Cost Allocation Agreements

Presentations (Partial Listing)

1. Moderator and speaker at Cal/EPA Public Stakeholder meetings implementing the 2004 California Land Reuse and Revitalization Act (AB 389). 2004-2006.

2. Speaker, California Unified Program Agencies Annual Convention regarding Regulatory Policy in CUPA Enforcement and Brownfields Cleanup Oversight. February 2005.

3. Speaker, California Bar Association, Hazardous Waste Roundtable, on Public Policy and Regulatory Issues in California. April 2005, April 2006.

4. Speaker, Parker Milliken Hazardous Waste Seminar, on DTSC Enforcement and Brownfields Redevelopment policies. May 2005 and May 2006.

5. Speaker, Arcadis Brownfields Redevelopment Seminar, on New Regulatory Developments in Contaminated Property Prospective Purchaser Liability Immunity. September 2005.

6. Speaker, California County Counsels Assn. Annual Convention, on Implementation of DTSC Corrective Action Regulations by Local Government. October 2005.

7. Speaker, California Bar CEB Environmental Law Seminar, on California Land Reuse and Revitalization Act (AB 389), Is It Useful? January 2006

8. Speaker, Groundwater Rights, Regulation and Use Seminar on Protection of Groundwater in DTSC Lead Brownfield Cleanups. September 2006.

9. Speaker, 22nd Annual International Conference on Soils, Sediments and Water, on Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse. October 2006.

10. Seminar Organizer and Speaker, West Virginia Department of Environmental Protection Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, November 2006.

11. Speaker, Sacramento County Bar Association, Real Estate Section, Buying Contaminated Property. What You Need to Know. June 2007

12. Speaker, National Brownfields Conference, How to Build and Maintain Confidence for Brownfield Projects. November 2007.

13. Speaker, AIG Nationwide Environmental Forum, California's Complex Environmental Regulatory Scheme, January 2008.

14. Peer reviewed Article Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, published in the *International Journal of Soil and Sediment Contamination*, March/April 2008 issue, vol 17, no. 3.

15. Seminar Organizer and Speaker, Nation of Bermuda, Department of Environment and Public Works regarding Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, May 2008.

16. Speaker, 2008 State Bar of California Annual Conference, How to Navigate California's Complex Environmental Regulatory Scheme, September 2008.

17. Keynote Speaker, National Association of Chemical Distributors Annual Meeting regarding Legislative and Regulatory issues facing the Chemical Industry, April 2009.

18. Keynote Speaker, California Trucking Association Annual Conference, Recent Cal/EPA and CUPA Enforcement against the Motor Carrier Industry, Nov. 2010.

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REPRESENTATIVE PROJECT EXPERIENCE

During ERRG's time in the MEC industry we have compiled an exceptional record of accomplishments. ERRG has completed assessment and investigation projects for both public and private entitles under varying terrain, vegetation, and weather conditions. We fully understand that every site is unique and planned MEC operations will be dependent on its historical use, physical features, intended end use, state of available technologies and budgetary limitations. Through our extensive planning and execution of "end-use" driven remediation projects, we have developed innovative, unique and cost effective techniques that benefit all parties involved in the current and future usage of the site. We believe that the integration of different disciplines often times provide opportunities for gains in efficiency helping to reduce the overall time and cost required of a project.

A portion of the work ERRG has performed to date has been located within the state of California, such as our MEC Support to MARRS Services for the Remedial Investigation Study of Mojave Gunnery Range, the MEC Construction Support and Munitions Disposal project supporting MWH Constructors, Inc. at the Former Hamilton Army Airfield, our Time Critical Removal Action at the former Camp San Luis Obispo performed for the U.S. Army Corps of Engineers, and MEC construction support services provided for Taber Construction, Battelle, Vanguard Construction, and Romero Construction at the former Concord Naval Weapons Station. These projects have familiarized us with the unique set of additional regulations that the MEC industry is subject to, and that must followed from the planning phase up through completion on any projects awarded within the State of California.

Projects we have performed outside of California such as the Camp Navajo MEC Clearance have demonstrated the growing level of environmental awareness by the State of Arizona. Other projects such as the Range Clearance and Target Removal/Replacement project at Yodaville Training Range and Range Clearance and Target Placement Activities at Range 10 North have given us an understanding of the many changing needs of a federal client and has allowed us to be responsive and fluid to those needs while still ensuring that the proper protocols and procedures are followed. We present a brief sampling of ongoing and completed ERRG MEC projects as follows for your review. Additional information can be provided should you wish to explore a more in depth review of any of these projects.

REPRESENTATIVE ERRG MEC PROJECTS

Project 1

Contract: **MEC Construction Support and Munitions Disposal**
Contracting Organization: **MWH Constructors, Inc.**
Location: **North Antenna Field, Former Hamilton Army Airfield**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
January 2010	On Going	$76K	$76K

ERRG was awarded a contract with MWH Constructors, Inc., for MEC Support Services at former Hamilton Army Airfield. Under this tasking, ERRG performed a surface clearance of the project site in advance of vegetation grubbing subcontractors. Additionally ERRG was tasked with performing UXO clearance of excavated soils and demolition of materials documented as explosively hazardous and materials potentially possessing an explosive hazard. ERRG's support to MWH under this contract has been performed during multiple mobilizations according the scheduling requirements of the prime contractor or as dictated by availability of laboratory results for soils potentially contaminated by lead due to the past usage of this former military site.

Project 2

Contract: **N62473-07-G-8201-0001, Navy QA Contract**
Contracting Organization: **U.S Navy – BRAC PMO West**
Location: **Concord Naval Weapons Station, Mare Island, MCAS El Toro**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
December 2006	June 2011	$476K	$476K

ERRG has been awarded a quality assurance contract with the Base Realignment and Closure Program Management West Office. Under this contract ERRG performs quality assurance services on Navy projects to document the activities and performance of companies tasked with performing MEC support services and to ensure that the these contractors comply with the requirements of project documents such as work plans, explosive safety submissions, accident prevention plans, etc..

Initially awarded as a one year contract, to date ERRG has performed these services for Navy BRAC PMO West at Concord Naval Weapons Station, Mare Island Naval Station, Marine Corps Air Station El Toro, and Hunter's Point Shipyard, under the base contract scope and 14 separate modifications to the contract for time and site locations.

Additional taskings on the contract involve providing MEC Support Services, such as construction support and MEC escort of various Navy environmental support contractors.

Contract: **Range Sustainment and Remediation Environmental Multiple Award Contract (EMAC)**

Project 3

Contracting Organization: **U.S Navy - NAVFAC Southwest**

Location: **MCAS Yuma, Chocolate Mountains and Barry M. Goldwater Bombing Ranges**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
March 2009	March 2014	$100M	$8.8M

ERRG has been awarded contract tasks at Marine Corps Air Station Yuma under the RSREMAC contract with NAVFAC SW. Under these awards ERRG has performed range clearance and target renovation/replacement efforts at five range sites within the MCAS Yuma bombing ranges, and is set to begin another site in early November 2010. Contract objectives involve the implementation of surface and subsurface range sweeps on active firing ranges during scheduled range closure windows. ERRG performs road maintenance and

renovation on these range sites to allow for military and civilian contractor vehicle and equipment transport to and from each range to the range entrances and frequently used routes in-between. One component of the tasks under these contracts involve the removal and replacement of existing range targets with replacement targets prepared by ERRG to simulate realistic targets in active military theaters.

Additionally, ERRG has been tasked with the UXO clearance and renovation of simulated airfields to appear realistic for military aviators for training and firing practice operations.

Contract: **RI/FS Borrego Springs, Borrego, CA**

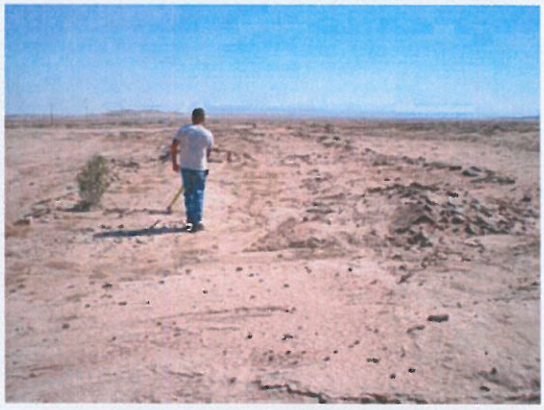
Project 4

Contracting Organization: **U.S Army Corps of Engineers, Los Angeles District**

Location: **Winona Target**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
February 2007	**On Going**	**$1.4M**	**$1.4M**

Borrego Springs is a Formerly Used Defense Site (FUDS) located in San Diego and Imperial Counties, California. Its primary use was an aircraft bombing range and troop maneuver area during the post WWII era. This site will eventually be released to the public for parks and recreation use.



ERRG was awarded a sole source $1.4M Task Order from the USACE Los Angeles District to conduct a remedial investigation/feasibility study (RI/FS) of approximately 3,211 acres of an identified munitions response area (MRA). Initial tasks included site visit, development of RI/FS work plan, finalization of the conceptual site model, and setup of a project website. RI/FS field activities will include geophysical survey of the area, data/target interpretation and selection and intrusive investigation of selected anomalies. ERRG will mobilize three-four person UXO/Geophysical teams that will be conducting all of the aforementioned activities.

Additionally, ERRG is responsible for the collection, classification, certification, demolition, and disposal of all MEC/MPPEH/MD and scrap recovered during the intrusive field investigation activities. ERRG will also have a scientific team on site during the field activities to provide support on cultural and biological resources management and mitigation. ERRG's subcontractors for this project include InDepth Corporation and CH2M Hill. Other tasks under this task order include the preparation and submission of the RI/FS report, decision documents, and the proposed plan for remediation.

Contract: **RI/FS Mojave Gunnery Range, Mojave CA**

Project 5

Contracting Organization: **U.S Army Corps of Engineers, Los Angeles District**

Location: **Former Mojave Gunnery Range, California City, California**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
February 2008	July 2008	$195K	$195K

Mojave Gunnery Range "C" is a Formerly Used Defense Site located in Kern County, California. It was primarily used as an aircraft bombing range and will be released to the public as a parks and recreation area. Below is a summary of the work that ERRG conducted on this project:

MARRS GeoServices was contracted by the USACE Los Angeles District to conduct an RI/FS of the Munitions Response Area (MRA). MARRS, strictly a geophysical company, does not possess a Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) license; therefore cannot conduct explosive/demolition operations.

MARRS subcontracted ERRG to assist in the remedial investigation phase of the RI/FS. Tasks under this contract included assistance in developing the Explosive Siting Plan and Demolition SOP. Field tasks included providing a UXO team to conduct anomaly investigation of selected targets. ERRG was also responsible for the collection, classification, certification, demolition, and disposal of all MEC/MPPEH/MD and scrap recovered during the intrusive field investigation activities. Field activities for this project were completed in July 2008.

Contract: **Surface Clearance and Mechanical Soil Sieving Camp Navajo Army Depot** ***Project 6***

Contracting Organization: **CH2M HILL Corporation**

Location: **Camp Navajo Army National Guard Depot, OB/OD Area**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
December 2008	June 2010	$2.6M	$2.6M

ERRG was tasked by CH2M HILL Corporation to perform three contracts at Camp Navajo Army Depot. Under the first contract, ERRG was responsible for conducting a 100 percent surface clearance of MRS A2, MRS B and NAAD 09; which total approximately 361 acres. The tasks included transportation of MEC items to an explosive storage magazine, identification of munitions debris and performing blow in place (BIP) procedures on ordnance items that were deemed unsafe to move.

The second and third contracts issued to ERRG were for the performance of a mechanical soil sieving contract of soils from Navajo Army Depot (NAAD) 02 and NAAD 09C soils. This project involved the mechanical sieving of 15,000 cubic yards of soil, and the separation, segregation, inspection and certification of 450 cubic yards of metals extracted from the NAAD 02 and NAAD 09C soils with an additional portion of existing metals from previous MEC investigation performed at the project site by other UXO contractors.

Introduction to Key Personnel

ERRG has assembled a team of personnel available to support this contract.

The personnel herein were chosen for their respective experience in the roles assigned to this contract.

ERRG's program management approach enables Brad Hall, our Program Manager, and key personnel under his management to access and assign the resources necessary to perform all work safely, complete the work on schedule, and with the highest quality. Our management strategy also establishes accountability with each position. With that accountability comes authority to make decisions or to take actions as necessary to ensure ultimate success of the contract.

Bradley S. Hall, PG	Proposed Job Title: **Program Manager**
Mr. Hall's Qualifications:	▪ 14 years as Program Manager for environmental restoration and remedial action contracts; 18 years as a Senior Manager working with environmental restoration studies and remedial action projects, and more than 20 years total requisite experience ▪ (they want exp executing MMR actions for DoD)
Education	▪ M.S., Geological Sciences, University of California Riverside, 1989 ▪ B.S., Geology, Beloit College, 1987
Special Qualifications	▪ Register Professional Geologist, California, No. 6207
Experience	▪ ERRG, Inc. (5/04 - Present) ▪ Ziggurat LLC (2/02 – 5/04) ▪ Tetra Tech, Inc. (6/93 - 2/02) ▪ Roux Associates (1/91 – 5/93)

Mr. Hall is a Sr. Program Manager with more than 20 years of expert Environmental Remediation Services and Site Assessment experience. He is an excellent communicator and works closely with his Clients/Customers as their Primary POC with ERRG; has developed excellent negotiating skills and relationships with the regulators; and has successfully negotiated closure for multiple CERCLA sites. He has been the Program Manager for more than 15 ID/IQ environmental investigation and restoration contracts in the past 15 years. Contracts values have ranged from $3M up to $100M with as many as 20 task orders being conducted concurrently. In addition to his program management experience, he has managed numerous Remedial Investigation/ Feasibility Study Programs, Litigation Support Programs, Phase I and II Site Investigations and Remediation Design Projects. His background includes projects conducted for government and private clients as well as work on behalf of attorneys and extensive experience coordinating and conducting legal investigations in preparation of expert witness testimonies. His background in IRP and CERCLA/SARA investigations includes the preparation and implementation of RI/FS Work Plans, Field Sampling Plans, H & S Plans, QA/QC Plans, Remedial Action Plans, Remedial Designs, and Site Closures.

Yodaville Target Clearance and Reconstruction, US Navy, MCAS Yuma Training Range, Arizona (Project 3)
Project Manager for range clearance and target replacement for the Yodaville Urban Training Facility located within the Barry Goldwater Range complex. Project includes assessment of structural integrity of existing targets, removal of structurally unsafe targets, and construction of new targets utilizing 20- and 40-foot used conex containers stacked up to 3 high and painted to look like buildings. UXO clearance includes a surface sweep of the target area and subsurface clearance of the access roads. All target removals and replacements are being conducted using armored equipment to eliminate the need to conduct subsurface sweeps around all of the targets.

Program Manager for **As-Needed Environmental Response Services Contract, US Forest Service,**

Region 5 Projects conducted under this five year contract have included phase I site assessments, Engineering Evaluation/Cost Analyses (EE/CAs), treatability studies, pilot tests, time critical removal actions, non time-critical removal actions, and treatment system construction. Projects have been conducted for both the US Forest Service (Regions 3 and 5) and the Bureau of Land Management in California and New Mexico. Most of the projects have been conducted in relation to abandoned mine lands or former waste disposal areas. A total of 35 Task orders have been issued to date on this contract totaling more than $10 million.

As-Needed ID/IQ Environmental Services Contract, Oakland, California, US Coast Guard CEU Oakland
Coordinated more than 150 projects in four states with up to 20 projects running concurrently at any given time. Program Manager for four US Coast Guard as-needed ID/IQ environmental services contracts from 1993 to date. Contract values ranged from $990,000 up to $4.5 million. Projects conducted under these contracts includes UST/AST investigations, remedial designs, construction management, asbestos abatement, NEPA compliance documentation, biological surveys, dredging studies, LBP investigations, and UST removals.

As-Needed HTRW Services, US Army Corps of Engineers
Coordinated more than 40 staff concurrently working at more than six installations/project sites in four states. Deputy Program Manager for five year $60 million as-needed environmental ID/IQ environmental services contract for US Army Corps of Engineers, Sacramento District. Projects conducted under this contract included remedial investigations, feasibility studies, pilot studies, and interim remedial actions at more than 30 sites in five states.

Environmental Multi-award Contract (EMAC) for Environmental Restoration Services, Naval Facilities Engineering Command (NAVFAC) Southwest
Program Manager for $50M US Navy as-needed environmental restoration services contract from 2008 to date. Includes coordination of environmental investigation and remediation projects in Arizona, California, Nevada, and New Mexico. To date, individual task order values have ranged from $161,000 up to $667,000. Projects conducted under this contract to date include a removal action for VOC-contaminated soil, a RI/FS for TPH and PCB contamination at a former firefighter training facility, and investigation of VOC contamination in proximity to former UST sites. Task orders issued to date total more than $1 million.

Range Sustainment and Remediation Environmental Multi-Award Contract (RSREMAC), Naval Facilities Engineering Command (NAVFAC) Southwest
Program Manager for $100M US Navy as-needed contract to provide performance-based range cleanup, restoration and sustainment services for US Navy and Marine Corps facilities in Arizona, California, Colorado, Nevada, and New Mexico, Utah, Oregon, and other DoD installations nationwide. Included under this contract is the renovation of the Yodaville target complex at the Marine Corps Air Station in Yuma, AZ. Task orders have been issued to date on this contract totaling more than $2.3 million.

Camp Navajo, Bellemont, Arizona (Project 6)
Program Manager for a MEC Surface Removal Action and a MEC Soil Screening project in the former Open Burn/Open Detonation (OB/OD Site) area at Camp Navajo. The work was conducted for the Army National Guard under a subcontract to CH2M Hill. The MEC Surface Removal Action utilized a team of 22 UXO Technicians to sweep 361 acres (485 whole or partial 200 x 200' grids). The MEC Soil Screening project utilized and armored excavator and an armored power screening plant to process approximately 12,000 cubic yards of mixed soil, metal debris, and munition debris. All processed soil larger than ¾-inch was spread and scanned by the field team and all metal debris was processed and certified as safe for recycling/disposal.

Cape Disappointment, Ilwaco, Washington. Program Manager for emergency MEC evaluation and abatement project for the US Coast Guard at Station Cape Disappointment.
Rock Scaling activities being conducted to stabilize a cliff adjacent to the station buildings uncovered blasting holes containing detonation wires. Upon discovery, all activities were halted and the USCG evacuated the facility. Under ERRG's existing as-needed ID/IQ contract, ERRG was tasked to conduct an emergency evaluation of the site and abate any suspect explosives remaining at the site. ERRG mobilized a crew and, utilizing cranes and man-lifts, evaluated and cleared more than 30 drill holes in the 250-foot cliff face.

David Williams	Proposed Job Title: **Project Manager**

Mr. Williams's Qualifications:	▪ 14 years as Program Manager for environmental restoration and remedial action contracts; 18 years as a Senior Manager working with environmental restoration studies and remedial action projects, and more than 20 years total requisite experience ▪ (they want Site Assessment)
Education	▪ Naval School Explosive Ordnance Disposal (NAVSCOLEOD) Graduate ▪ B.S. Management University of Phoenix, 2008
Special Qualifications	▪ OSHA 30 Hour Construction Safety Course
Experience	▪ ERRG, Inc. (5/10-Present) ▪ Bering Sea Eccotech (9/07 – 4/10) ▪ Rest Corp (12/04 - 9/07) ▪ U.S.M.C (1/85 – 12/02)

Mr. Williams has over 23 years of field and operational experience in all areas of explosive ordnance disposal (EOD), unexploded ordnance (UXO) clearance, demolition range operations, demilitarization operations, and range sustainability and closure. Mr. Williams' military EOD experience covered all aspects of EOD operations in the United States Marine Corps, including deployments to active military theaters of war.

Mr. William's civilian UXO experience has focused on advanced quality management principles, range clearances, and demilitarization operations. During the last 5 years, he has worked on numerous MEC projects, amassing a vast amount of knowledge and experience during range clearances and demilitarization operations of active military ranges in the Southwestern United States.

In addition, Mr. Williams has over 15 years' experience the areas of personnel management, project planning, and implementation as an EOD Officer and Senior UXO Supervisor.

Yuma MCAS, Yodaville Target Removal/Replacement Renovation Project 2010, Modification 0002, California ***(Project 3).*** Mr. Williams was the Operations Manager tasked with overseeing the target demilitarization and renovation activities at Area 10 North of the Chocolate Mountains Ranges East located in Niland, California. As the MEC Operations Manager, Mr. Williams oversaw all project operations and managed the onsite project personnel and subcontractor activities and ensured implementation of the project plans. Mr. Williams was integral in planning and implementing multiple operations within a 200-acre site which required completion within a condensed window of availability scheduled to occur during the planned closure of the ranges of Camp Billy Machen. All facets of operations required a high level of interaction with range scheduling and multiple Navy and Marine Corps points of contact.

Navy Range Clearances and Demilitarization Operation Projects. As Senior UXO Supervisor (SUXOS) for numerous range clearance and demilitarization (demil) projects located throughout California, Nevada, and Arizona, Mr. Williams was responsible for planning and managing range clearance and demolition of recovered MEC items to include processing, inspection and certification, and shipment of MDAS materials to authorized facilities for disposal. He was responsible for the supervision of a fleet of heavy equipment and personnel transportation vehicles, and managing up to 150 personnel while conducting range sweeps and target construction in numerous target areas simultaneously. He also served as liaison between BSE and the Navy, and planned and conducted weekly and monthly status meetings attended by owner, client, and other stakeholders.

Frank Cota	Proposed Job Title: QC Manager
Mr. Cota's Qualifications:	▪ 15 years in personnel management, quality services, and customer service/satisfaction roles. ▪ 17 years MEC/EOD operations, including site assessment projects.
Education	▪ Naval School Explosive Ordnance Disposal (NAVSCOLEOD) Indian Head, MD, 1985
Special Qualifications	▪ ASQ Qualified Quality Auditor, 2004 ▪ OSHA 30 Hour Construction Safety Course
Experience	▪ ERRG, Inc. (11/09-Present) ▪ Parsons Infrastructure (12/06 – 11/09) ▪ Northgate Environmental (5/03 – 2/06) ▪ Other UXO positions (3/96 - 5/039)

Mr. Cota has over 17 years of field and operational experience in all areas of explosive ordnance disposal (EOD), unexploded ordnance (UXO) clearance, demolition range operations, and range sustainability and closure. Mr. Cota's civilian UXO experience has focused on advanced quality management principles and implementation strategies. During the last 13 years, Mr. Cota has worked on numerous MEC projects, ranging from site investigation and range maintenance, to MEC cleanup projects at active and former Navy and Army facilities in California.

Project Manager for **Former Camp San Luis Obispo, California Time Critical Removal Action** (TCRA) project. As PM, Mr. Cota managed a 23-person TCRA Surface Clearance project located at the former Camp San Luis Obispo MRS-05 project site in San Luis Obispo, California. The project was located in close proximity to two elementary schools and was actively used as part of the Cal Poly agricultural department student training program. This project involved performing a surface clearance 170 acres, demolition operations of MEC items discovered, and installation of UXO warning signs at various locations in the vicinity of the project site. Data collected during the investigation are being used for assessment of the potential level of contamination of adjacent properties within close vicinity to this FUDS site.

3rd Party Quality Assurance Projects,California. Project Manager/UXO Corporate Quality Control Officer for multiple ERRG projects located throughout California. Currently manages quality assurance prime contract for NAVFAC PMO West at multiple locations in California (Concord Naval Weapons Station **(Project 2)**, Mare Island, Hunter's Point, El Toro) providing 3rd party Q/A of diverse MEC projects. Project requirements vary depending on location but are oriented around the assessment of UXO contamination present at each Navy project site.

Yuma MCAS, Target Removal/Replacement Renovation Project & Range Clearance Project 2010, California (Project 3). Mr. Cota was the QA Manager tasked with overseeing the target demilitarization and renovation activities during the course of this project. As the QA Manager, Mr. Cota oversaw all project operations and managed the onsite project QA Specialist and all QA activities. Ensured compliance of project personnel with the project plans. Served as liaison concerning contract compliance with NAVFAC Contracting Officer.

Camp Navajo, Bellemont, Arizona **(Project 6)**,
Mr. Cota recently participated in the full scale MEC Surface Removal Action located at the former Open Burn/Open Detonation (OB/OD Site). This 361 acre site, comprised of wooded and steep terrain, required a surface removal and was divided into 485 whole or partial 200 x 200' grids with contamination ranging from mild to heavily concentrated.

CONSULTANT AGREEMENT

This agreement ("Agreement") entered into December xx, 2010, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Environmental Risk Services Corporation, a California corporation, with its primary office located at 1600 Riviera Ave. Suite 310, Walnut Creek, CA 94596 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain services for Arsenal Cleanup Project. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through the City Attorney may determine from time to time, CONSULTANT shall perform the services set forth in the Task Order labeled Exhibit A, which is attached hereto and incorporated herein by reference. It is anticipated by the parties that the scope of services will be conducted in at least three phases, including an initial due diligence phase to determine whether any funding sources are available to complete remediation (e.g. insurance policies or state and federal funding). Upon receipt of adequate funding in the escrow account, subsequent phases will include site investigation, risk assessment, liability allocation, and design and implementation of remediation actions.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work. The parties agree that the efficient and effective prosecution of this project is vital to the success of the project. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond

CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the full satisfaction and approval of the CITY ATTORNEY.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. COMPENSATION.

(a) $10,000 for out of pocket expenses. CONSULTANT shall be reimbursed by CITY for out of pocket expenses incurred in the prosecution of this project. The amount of out of pocket expenses shall not exceed $10,000. An invoice and backup documentation shall be provided to CITY for the expenses. If funds become available, whether through insurance or other means, and the costs and expenses associated with CONSULTANT's services have been paid as set forth in Section 3(b) of this Agreement, then the $10,000 shall be reimbursed to CITY.

(b) Contingency Agreement. This is a contingency fee agreement. Other than through the escrow process described herein and the $10,000 in out-of-pocket expenses set forth in Section 3(a) above, CITY shall pay no compensation for the services to be provided by this Agreement. The compensation paid to CONSULTANT shall be from money received by CITY from the US Treasury, State of California, insurance companies, landowners, grants, and other sources for the investigation and remediation of the Benicia Arsenal, services related to that investigation and cleanup, or from settlement, resolution, or satisfaction of any claims related to the contamination, investigation and/or remediation of the Benicia Arsenal (hereafter, "Remediation Funds"). . CONSULTANT shall have the exclusive right to negotiate Remediation Funds on behalf of CITY. All Remediation Funds shall be deposited into an escrow account, and paid from that escrow account exclusively to CONSULTANT in accordance with escrow instructions to be agreed on by CITY and CONSULTANT.

(c) CONSULTANT shall have the right to timely payments from the escrow account providing fair compensation for services rendered from the effective date of this Agreement. CITY shall have the right to confirm that CONSULTANT has performed work consistent with the Scope of Work. CONSULTANT shall submit monthly reports documenting its time and materials expended for the services performed under this Agreement during the preceding period. Invoices or reports must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item.

(d) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(e) CONSULTANT agrees that CITY will be reimbursed for City Attorney and staff time and travel expenses including council and other city officials expended during the time of this contract. CITY will keep record of hours spent and hourly rates of employees devoting time to this project. CITY will be reimbursed from the same sources as noted in 3b at or before the final closure and sign off by the agency that has the authority to deem the remediation and closure complete.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) paper copies of each product described in Exhibit A and one electronic version. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for non-performance or breach of the terms of this Agreement by serving upon CONSULTANT written notice of termination. CONSULTANT shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CITY written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT or CITY at the address indicated in Section 11. At the time of mailing, copy of the notice shall also be provided by email.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof. CITY shall pay CONSULTANT for work actually performed according to the scope of work up to the effective date of the notice of termination, provided, however, that this payment is limited by the sum of the $10,000 for out-of-pocket expenses indentified in Section 3(a) of this Agreement plus any Remediation Funds, as defined in Section 3(b) of this Agreement, that are received at any time;

(c) If CONSULTANT issues a notice of termination,

(i) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof. CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, provided,

however, that this payment is limited by the sum of the $10,000 for out-of-pocket expenses indentified in Section 3(a) of this Agreement plus any Remediation Funds, as defined in Section 3(b) of this Agreement, that are received at any time;

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting the same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. However, the CITY authorizes CONSULTANT to meet and negotiate with others in a manner consistent with the CITY's goals and scope of work. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

If to CITY: City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT: Mark O'Brien
ERS Corporation

1600 Riviera Ave. Suite 310
Walnut Creek, CA 94596

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent. The primary team members listed in CONSULTANT's Proposal on pages 18-20 shall not be substituted unless prior agreement is given by the City Attorney.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

Policy	Minimum Limits of Coverage
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage $1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence	$1,000,000 per occurrence. If Commerical General Liability Insurance or other form with a

basis (occurrence form CG 0001)	general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession.	Generally $1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement unless first authorized in writing by the CITY. CONSULTANT shall immediately notify CITY if, at any time during the performance of this contract, CONSULTANT becomes aware of any actual or potential conflicts of interest with CITY.

It is anticipated that the CONSULTANT may provide consulting services to and cooperate with other property owners so that economies and efficiencies of scale may be achieved. For the purposes of this Agreement, the CITY shall be the CONSULTANT's primary client. If a conflict arises between the CITY and any other property owners, the CONSULTANT shall cease any consulting services and/or cooperation with those other property owners and work only for the CITY unless otherwise agreed by the CITY and CONSULTANT.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. CONTINGENCY ATTORNEY SUPERVISION. The City Attorney retains (1) complete control over the course and conduct of the project; (2) a veto power over any decisions made by outside counsel; and (3) must be personally involved in overseeing litigation, if any.

27. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.Executed by CITY and CONSULTANT on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by the CITY as shown below.

ERS CORPORATION

BY:_____
DATED

CITY OF BENICIA

BY:_____
DATED:

RECOMMENDED FOR APPROVAL

_____
Department Head

APPROVED AS TO FORM

_____
City Attorney

SCOPE OF WORK

The work to be performed under this Agreement includes the work proposed in the Consultant's proposal and the Request for Qualifications, which are incorporated by reference and are subject to the items and limitations listed below.

1. Early Meetings with the Department of Toxic Substances Control and other agencies.

2. Insurance/Funding Options: In order to provide a source of funds for the Arsenal Project, the Consultant shall review and analyze historic insurance policies and insurance records of the City. The Consultant will tender the Arsenal Project to the appropriate insurance companies. If gaps are found in the insurance coverage, the Consultant will perform the necessary historical research to locate other items of evidence of insurance coverage such as non-traditional evidence, e.g. leases or other items mentioning possible responsibility of a party.
    a. The Consultant may assist other property owners, especially smaller property owners holding less than a combined 1½ acres, to determine if they have historical insurance policies and provide assistance with tendering their claims. Similarly, the Consultant may assist other property owners, especially the smaller property owners, to obtain grants and agreements with the Department of Defense and other state and federal agencies. The Consultant may assist other property owners to design and implement investigation and remediation efforts.
    b. The Consultant shall determine if insurance coverage will be provided to the city only if there is litigation or if coverage is provided for a threat of litigation or for an order issued by the State or Federal government.
    c. The Consultant shall also provide advice on and broker Cost Cap containment policies and other types of insurance products that will help shield the City (and other property owners if possible) from unplanned cleanup costs.

3. Preliminary Strategy and Goal Setting: The Consultant shall meet with the Council Subcommittee and City Attorney to review and discuss preliminary objectives and outcomes for the project. As a result of this meeting, a timeline and chart of decision-making and action and key milestones, deliverables, and agreements shall be prepared. For example:
    1. Early Meetings with the Department of Toxic Substances Control and other agencies: TBD
    2. Insurance Review: TBD
    3. Preliminary Strategy and Goal Setting: TBD
    4. Funding Options: TBD
    5. Develop Strategies: TBD
    6. Implement Strategies: Ongoing
    7. Public Participation: No less than quarterly.

4. Funding Options: The Consultant shall identify and pursue, as appropriate and reasonable, funding options available to the City beyond the insurance option. Options

included, but are not limited to, grant funds such as the EPA Brownfields grant program, US O.E.A.BRAC or FUDS Cleanup grants, indemnity, California Revolving Loan program, CERCLA ability to pay and private sources as another possible funding source.

5. Develop Strategy: Based on a review of existing documents pertaining to the Arsenal, the Consultant will develop a strategy for achieving the City's goals in a cost, time efficient and effective manner. The Strategy should include consideration of the best regulating mechanism for the Project goals including which is the best state agency to lead the project, which approach minimizes the out of pocket expenses and liability for City and other property owners, and which statutory method for meeting CERCLA and environmental clearance (voluntary agreements or orders).
    a. The Consultant shall analyze the City's potential liability and provide a report. Liability for public utilities as well as property ownership, among other things, shall be reviewed and considered if necessary.
    b. Various approaches shall be considered and recommended, including Hazardous Substances Accountability Act, Polanco Act, voluntary agreements with one or more PRP, CERCLA methods or orders.
    c. The Consultant shall analyze the public health and safety risks considering the existing documentation to develop cleanup levels and estimate remediation costs. The Consultant shall consider whether a CERCLA 120f approach is required.

6. Implement the Strategy:
    a. Directed by the City Attorney, the Consultant shall attend meetings as a representative of the City. Meetings include those with regulators, other PRPs, insurance companies and the public.
    b. The Consultant shall monitor implementation of the strategy and report to the City to make sure that the goals of the Arsenal Project are attained. The Consultant shall recommend additional measures to attain the goals, if necessary.

7. Public Participation:
    a. The Consultant shall provide information and recommendations, if any, for the Council Subcommittee's monthly report to the Council and public.
    b. The Consultant shall participate in periodic meetings for the general public and provide information for the City's website. Information shall consist of background information to assist the public's need to know as well as current status updates on what is going on with the project. There shall be an up to date FAQ provided by the Consultant as part of this information task. Copies of the information on the website shall be provided in hard copy for a repository of documents to be retained in the City of Benicia Library while the project is current. Public outreach shall include all stakeholders especially the property owners and businesses of the industrial park and lower arsenal.

8. Legislation and lobbying. As needed, the Consultant will provide lobbying services to assist with any necessary state or federal legislation related directly to this scope of work.

9. Consultant will provide all of the environmental consulting, legal, and remediation services that are funded by settlements and/or agreements with insurance companies, other responsible parties, the US Department of Defense, institutions including state and federal agencies issuing grants, or similar.

10. Consultant shall provide assistance to other property owners only after consulting with outside legal counsel to make sure the City's interests are not jeopardized by such work.

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