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**Benicia Police Officers Association/BPOA
Memorandum of Understanding
(Approved Via Council Resolution 19-71)**

July 1, 2019– June 30, 2021

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Appendix A Salary Schedule (Note: to be Updated upon final printing)

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 and BPOA agree that there shall be no discrimination of any kind because of age (over 40); race; creed; skin color; religion; national origin; ancestry; veterans status; physical or mental disability; medical condition; genetic information; marital status; sexual orientation; sex; gender, gender identity, or gender expression; political affiliation; concerted labor activity or other protected activity or status; or on any other basis prohibited by applicable federal and State law against any employee or applicant for employment.

The City and BPOA shall not discriminate against any employee covered by BPOA or assigned to BPOA because of membership or non-membership in BPOA.

The City and BPOA recognize that the City has an obligation under the Americans with Disabilities Act (ADA) to meet with individual employees who request a need for reasonable accommodation in the workplace because of a disability covered by the ADA. If the City is required to provide reasonable accommodation to an individual employee in compliance with the ADA which are in potential conflict with any provision of this Memorandum of Understanding, BPOA will be advised of any such proposed accommodation and be afforded an opportunity to discuss the accommodation prior to implementation by the City, but no longer than ten (10) business days.

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.

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.
- 5.5 New to the bargaining unit employee orientation is defined as the onboarding process, whether in person, online or through other means, which the City provides information regarding employment status, rights, benefits, duties and responsibilities, or any other employment related

matters.

The City shall provide written notification the Union's designee, by email not less than ten (10) calendar days in advance of all new to the City's employee orientations except that a shorter notice may be provided in a specific instance wither there is an urgent need critical to the employer's operations that was not reasonably foreseeable.

The Union shall be provided up to thirty (30) minutes to meet with the new to the City's employee during the new employee orientation, who are present without the City. The Union and its authorized representatives shall not disparage the City and its representatives during this orientation meeting.

Within thirty (30) days of hire or by the first pay period of the month following the hire of the new employee, the City shall provide Union's designated representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer and home addresses. The City shall provide the Union this information for the bargaining group at least every 120 days, except as specified in AB119.

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 (10) hour Schedule:

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

The Monthly salary of approximately 5% shall be added to base salary (effective 7/1/17) as all unit members currently receive this monthly salary as part of the base salary.

Training Days shall be full days (8 Hours) on a quarterly basis as needed and determined by the Chief of Police.

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

(10) hour increments for employees assigned to traffic/investigations/administrative sergeant.

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 four (4) 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, Traffic, and Administration Divisions will work a (10) hour day schedule and therefore be eligible for patrol pay as outlined in Section 6.1

6.2 (a) School Resource Officer (SRO) (8) Hour Shift Schedule

Employees assigned by the Chief as an SRO will work a forty 40 hour per week, five (5) eight (8) hour day schedule as determined by the department. These employees shall be entitled to overtime in accordance

with the overtime in Section 7 of this MOU.

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.

6.4 Pilot Program for the period of July 1, 2019 – June 30, 2021

6.4.1 Schedule - The parties agree to revert back to a 2080 annual hours schedule as soon as administratively possible after adoption of this MOU by the Council as a pilot program for all POA members during the term of this contract which expires on June 30, 2021.

6.4.2 Overtime – Nothing in this pilot project shall alter the Police Chief’s discretion to assign overtime.

6.4.3 Cost – The POA agrees to forgo a 1% salary increase to the salary range of all positions in this bargaining group pursuant to section 15.1.3 above toward potential increase cost in overtime of approximately 30% related to reverting to the 2080 annual schedule. The parties agree to meet and confer upon request of the Police Chief within 5 working days if the overtime costs will exceed the 30% overtime threshold within the next 30 – 45 days. If the parties are unable to reach agreement on alternatives to staying under the 30% OT threshold cost, the pilot program will be discontinued as soon as administratively possible and the 1% salary increase pursuant to 15.1.3 shall be conferred on the salary range for all classifications in this unit.

The parties agree to meet in January 2021 if the Police Chief determines that the actual OT cost is below the 30% OT threshold for the period of implementation of the pilot program until December 31, 2020 to renegotiate the 1% that section 15.1.3 regarding conferring all or part of the 1% to the salary schedule of all classifications in this.

The parties agree that this process shall not be grievable or subject to any impasse process including fact finding.

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. Forced overtime shall be assigned based on reverse seniority. When patrol staffing (20 assigned) falls 20% of full staffing, a forced list shall be established and used to assign forced overtime. All employees below the sergeant classification shall be subject to the forced list. The Forced list shall be maintained and updated based on personnel. The forced list shall not be used once patrol staffing rises above 80% of full patrol staffing.

C. 12-Hour Shifts/(10) Hour Shifts: Employees working 12-hour shifts or (10) 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 (10) in a day for employees assigned to traffic, investigations, administration sergeant, or in excess of 160 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 160 in the 28-day FLSA work period. 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 /
160 hours.

D. 10 Hour Shifts: Employees working a 4/10 schedule, shall be 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

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

F. "Applicable Incentives" for FLSA overtime shall include education pay, longevity 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 eighty (80) hours must be liquidated by monetary payment.

The department head in his/her sole discretion may permit an employee to accrue compensatory time off in excess of eighty (80) hours maximum.

7.2 (a) Compensation for Overtime Work for School Resource Officers

The School Resource Officers (SROs) work a varied and extended work schedule during the school year and, therefore, accumulate overtime hours during most weeks of the school year. The maximum comp time balance for SROs shall be limited to two-hundred (200) hours. At the termination of an assignment as an SRO and at the end of each school year, a plan shall be developed with the officer to reduce the comp time leave balance to eighty (80) hours within 6 months from the end of the SRO assignment or to 80 hours by the beginning of the next school year. In addition, when schools are closed for a holiday or summer, SROs may be assigned patrol shifts, or will be scheduled to take compensatory time off, at the discretion of the Chief or their designee. When working patrol, SRO's will fall under the patrol schedule and OT provisions.

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. Association Dues

8.1 A member of this unit may, at any time execute a payroll deduction authorization form or forms ("Deduction Authorization Form") as furnished by the Association.

8.2 The Association will be the custodian of records for such Deduction Authorization Form and will provide the City with a certification that it has and will maintain a Deduction Authorization Form, signed by each individual from whose salary or wages the deduction is to be made ("Certification"). The Association shall not be required to provide the City a copy of the member's Deduction Authorization Form unless a dispute arises about the existence or terms of the Deduction Authorization Form. However, the Certification will contain sufficient information to allow the

City to identify the appropriate level of deductions for each employee.

- 8.3 The City shall begin deductions in the amount prescribed by the Association in the first full payroll period after receipt of written Certification from the Association. The employer shall transmit such payments to the Association no later than thirty (30) days after the deduction from the member's earnings occurs.
- 8.4 Deductions may be revoked only pursuant to the terms of the Deduction Authorization Form. The City shall direct member requests to cancel or change deductions to the Association and shall rely on information provided by the Association regarding whether deductions for a member were properly canceled or changed. However, the parties agree that the City shall automatically cease deductions for any member who is no longer employed in a classification represented by the Association.
- 8.5 Other 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.
- 8.6 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.

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 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.

Exception: No vacation leave may be taken by an employee during his/her first six (6) months of employment except as approved by the Chief of Police. At the completion of six (6) full months of service, an employee is eligible to use vacation benefits as described above. This exception is not subject to the grievance procedure.

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 Maximum Vacation Accrual

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

Effective six (6) months after the implementation of the new ERP (financial payroll software), employees covered by this Agreement may not exceed accrual cap of 360 hours. Employees at the cap will cease accruing vacation leave until their balance drops below the cap.

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 School Resource Officer Shift

School Resource Officers (SRO's) working an eight (8) hour shift will have eight (8) hours subtracted from their leave balance for each day of vacation leave taken on dates normally scheduled and eight (8) hours subtracted for vacation leave taken on the week day employee is not regularly scheduled to work if the holiday falls on it.

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.

This item was completed and is attached as Side Letter #1 to the MOU.

An employee when required by a court subpoena to appear in their

capacity as police officers for the City of Benicia on a regularly scheduled day(s) off and only if the employee received (14) days or less notice of cancellation of the Court subpoena to receive an additional 2 hours of overtime pay for only those days during the 14 day or less notice of cancellation that were regularly scheduled days off.

If an employee receives multiple subpoenas for the same day, they are only entitled to a maximum of 2 hours of if court is canceled for all subpoenas for that day. If you have multiple subpoenas for a day and you appear in court for at least one of the subpoenas, you are not entitled to this provision of the MOU. You are entitled to the OT provision.

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) year's 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.

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

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

School Resource Officers (SRO's) working an eight (8) hour shift will have eight (8) hours subtracted from their leave balance for each day of sick leave taken on dates normally scheduled for 8 hours of work.

13.7 Supplemental Leave

The City will propose a supplemental leave program for adoption and will satisfy meet and confer requirements, if any with its employee organizations within 180 days adoption of this MOU by the City Council.

13.8 MOU LEAVE FY 2019/2020 and 2020/2021

Accrual of MOU Leave for FY 2019-20 and FY 2020-21

Effective the first pay period following Council approval of this agreement, employees who are in full time status at the time of contract ratification will accrue the value of 3.33 hours of "MOU leave" per month for fiscal year 2019-20 (represents 40 hours) and 20 hours of "MOU leave" for fiscal year 2020-21. This accrual shall cease effective June 30, 2021. receive 40 hours of "MOU leave" for fiscal year 2019 – 20 and 20 hours of MOU leave for fiscal year 2020-21. The MOU leave will be credited to an employee leave bank in a lump sum each fiscal year. Employees hired during the fiscal year will receive a prorated allotment.

Use of MOU Leave

Use of MOU Leave will be subject to the same restrictions as vacation leave (e.g., pre-approval by supervisor).

Payout of MOU Leave

If any employee has not used his or her MOU leave by November 20 of the fiscal year in which it has been accrued, any remaining balance will be paid out at the employee's regular rate of pay in the November paycheck. MOU leave is not carried forward into the next fiscal year.

Sunset

MOU leave sunsets at the expiration of this contract on June 30, 2021.

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, longevity 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.

15.1.1 Effective the pay period beginning July 1, 2019, a three and one-half percent (3.5%) increase for all salary ranges in this unit shall be conferred.

15.1.2 Effective the first full pay period in July 2020, a two and one-half

percent (2.5%) increase for all salary ranges in this unit shall be conferred.

15.1.3 The parties agreed that an additional one percent (1.0%) increase in salary shall be redirected towards the potential costs related to patrol schedules reverting back to 2080 annual scheduled hours as described in section 6.4 et.al above.

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

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

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 Section 15.11, (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) Effective July 1, 2018, sworn personnel assigned to the 3pm- 3am shift, 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 3am. 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.

- (3) 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.
- (4) 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.

Upon implementation of the new Enterprise Resource Program (ERP) payroll system, pay calculations shall change from monthly to hourly for hours worked for non FLSA exempt employees.

15.10 Final Separation Pay

An employee who separates employment is entitled to final 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.

Final pay upon separation from City employment 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.

Employees agree to allow the City to deduct from his/her final paycheck upon termination any outstanding balances owed to the City related to employees' employment in accordance with a repayment agreement between the parties.

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 work 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.

15.13 CalPERS Determination

The parties acknowledge that CALPERS is the only entity by statute that determines the persability of any and all pay, incentives or allowances.

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 provides a monthly uniform allowance of \$75.00 per month to employees towards the costs of purchasing, maintaining and cleaning their uniforms.

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 bachelor's 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. Longevity Pay

(Note: This section revises Educational Incentive Section 18 to update language to remain compliant with CalPERS regarding compensable compensation)

Effective the first pay period after ratification and approval of Council, employees employed in regular full-time positions shall be entitled to a 1.5% increase in compensation upon completion of ten (10) years of full-time service. Additionally, at fifteen (15) years employees shall be entitled to an additional 1.5% increase in compensation over the rate for the class in which employed.

The maximum amount a member would receive under this section is three percent (3%).

Section 20. 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 21. Court Appearance

21.1 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 three (3) hour's 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.

21.2 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 whichever 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 22. Insurance

22.1 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.

For the term of this contract, the City's contribution toward medical premiums shall be a maximum of up to the following contributions for any plan:

	Police Officer	Sergeant
Employee:	\$366.00	\$296.00
Employee plus One:	\$1,128.00	\$1,058.00

Employee plus Family: \$1657.00 \$1,588.00

The City shall allow employees who have written proof of alternative health plan coverage of 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.

If during the term of this contract a court of competent jurisdictions issues a final decision that is not appealable determining that any medical benefits in lieu contribution is subject to FLSA, the parties agree to meet and confer on alternatives to medical in lieu contributions.

(1) 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 consistent with the requirements of state law. 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.

22.2 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 or BPOA.

Section 23. Retirement

23.1 Retirement System (PERS) Retirement Formulas

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

23.2 3% @ 50 Formula

3% @ 50 Formula for Employees hired on or Before May 31, 2011

Only Employees employed on or before May 31, 2011 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.

23.3 3% @ 55 Formula

3% @ 55 Formula for Employees hired on or after June 1, 2011 and on or before December 31, 2012 OR Classic member as defined by CalPERS Only.

The parties agreed to amend the City's contract with Public Employees Retirement System (PERS) to implement the retirement benefit formula of 3% @ 55 and average three-year compensation formula in accordance with Government Code § 21362.3 for new hires hired on or after June 1, 2011 and on or before December 31, 2012 OR are classic members with CalPERS service with no more than six months break in service with a CalPERS agency as defined by CalPERS. The employees in this tier shall pay the entire employee share (9%) of retirement cost.

23.4 Member Contributions

Employee's required 9% PERS contribution towards employee share for all employees in the 3% @ 50 and 3% @ 55 formulas

Each employee covered by this MOU who are covered by the 3% @ 50 and 3% @ 55 CalPERS formulas 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.

23.5 Credit for Unused Sick Leave

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

23.6 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.

23.7 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.

23.8 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.

23.9 PEPRA Employees

PEPRA Employees hired on or After January 1, 2013 and who are not Classic Members as defined by CalPERS

Employees hired on or after January 1, 2013, who have no classic member reciprocity as defined by CalPERS shall be subject to the AB340 PERS pension formula of 2.7% @ 57. Employees shall pay 50% of the normal cost rate for the 2.7% @ 57 formula as determined by CalPERS.

23.10 Cost Share of Employer Rate

All Employees in this bargaining unit Pick-up of Employer's Share of Retirement regardless of CalPERS formula

Effective November 1, 2011, all bargaining unit employees began contributing an additional 5.336% of pensionable compensation towards the employer's share of retirement via a Government Code Section 20516 pre-tax payroll contribution. PER CalPERS resolution, effective November 1, 2020, the 5.336% of pensionable compensation towards the employer's share of retirement via shall be 1.394%.

Parties agree to amend the GC 20516 CalPERS amendment to include PEPRA employees to ensure employer contribution remains a pretax contribution.

Section 24. Grievances

24.1 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.

24.2 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.

24.3 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).

24.4 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 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.

24.5 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.

24.6 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 25. 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 26. Sick Leave Bank

Purpose

The City established a "Sick Leave Bank" policy 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. The City's sick leave program for all employees in this unit shall be consistent with City Policy Number 5.

Section 27. Vantage Care Retirement Health Savings:

Employees covered by the MOU may contribute funds to their Vantage Care accounts in accordance with program rules.

(Note: prior to the elimination of the City's contribution towards vantage care in August 2011, the City contributed 2%).

Section 28. Closing Clause

- 28.1 The effective date of this agreement shall be July 1, 2019 and the agreement shall remain in effect through June 30, 2021.
- 28.2 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.
- 28.3 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.

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 BPOA agree to meet within thirty (30) days for the purpose of renegotiating said Section.

27.5 This Memorandum of Understanding shall be submitted to the City Council for its adoption at its regular meeting.

In WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 2019.

BENICIA POLICE OFFICERS ASSOCIATION

CITY OF BENICIA

For POA

For City

Approved as to form:

City Attorney

