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Memorandum of Understanding
(Approved via Council Resolution 19-72)
2019-2021

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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 Public Service Employees' Association, Inc., hereinafter referred to as "BPSEA," for the purpose of promoting harmonious relations between the City and BPSEA, to establish an orderly and peaceful procedure, to settle differences which might arise and to set forth the basic, complete and full agreement between the parties concerning salaries and all other conditions of employment, and preclude any further negotiations during its term unless otherwise stated herein.

Section 2. Recognition

The Benicia Public Service Employees' Association (BPSEA) is recognized by the City as the bargaining agent for the miscellaneous City employees and for employees properly included in the said bargaining unit, under the conditions of the State law.

Section 3. Non-Discrimination

The City and BPSEA 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.

BPSEA shall cooperate with the City, to the extent authorized by federal and State law and regulations, in furthering the objective of Equal Employment Opportunities, as defined by Federal and State regulations.

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

The City and BPSEA 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, BPSEA will be advised of any such proposed accommodation and be afforded an opportunity to discuss same prior to implementation by the City.

Section 4. Harassment Policy

The City will not tolerate harassment of other City employees by any other employee of the City. Harassment is defined as any treatment of an employee which has the purpose or effect of affecting employment decisions concerning an individual, or unreasonably interfering with an individual's work performance, creating an intimidating and hostile working environment or any other factors as determined by local, state and/or federal laws. Such conduct includes but is not limited to unwelcome conduct of a sexual nature, arbitrary or capricious changes of assignments of an individual or of a particular sexual, racial or minority group, or display of a hostile attitude (including but not limited to yelling, swearing and verbal abuse) towards an employee by a supervisor or by a fellow employee which is not justified or necessary for the proper performance of the work of the employee.

Section 5. 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 Personnel Rules, Federal, and State laws. An employee's salary shall be directly deposited in the bank by the City without the employee's consent, except those employees who currently receive checks as of August 1, 2014 shall be grandfathered from this provision.

Section 6. Management Rights

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

to, the right to contract for or sub-contract any works operations of the City ; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Management rights shall be exercised in a manner consistent with applicable Federal and State laws, and Personnel Rules.

Section 7. Association Business

The City agrees to provide space on bulletin boards to the BPSEA for the announcement of meetings, elections of officers of the BPSEA and any other material related to BPSEA business. Furthermore, the BPSEA shall not post material detrimental to the labor-management relationship nor of a political or controversial nature. The BPSEA may send mail related to business to local official Association representatives at appropriate facilities to which mail is delivered.

The City agrees that access and use of the internal e-mail system is limited to the following BPSEA officers (President/Vice President/Secretary). It is understood that these officers may use the internal e-mail system for BPSEA announcements. The officers must get permission from their supervisor before sending out any announcement, and only use the internal e-mail system during lunch hours and after work hours. It is understood that this means of communication is limited to announcements only and is not intended as a means of social interaction between BPSEA members.

No BPSEA member or representative shall solicit members, engage in organizational work, or participate in other BPSEA 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.

BPSEA members or representatives may be permitted to use suitable facilities on the City 's premises to conduct BPSEA 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 by the BPSEA.

BPSEA 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 the Personnel Officer's designated representative. If the BPSEA representative is an employee of the City, the representative shall request from the representative's immediate supervisor, reasonable time off from the representative's regular duties to process such grievances. The City will provide a reasonable number of employee's time off, if required, to attend negotiation meetings.

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, and responsibilities, or any other employment related matters.

The City shall provide written notification to the Association 's designee, by email not less than (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 Association and its authorized representatives agree that it shall not disparage the City and its representatives during this orientation meeting.

Within 30 days of hire or by the first pay period of the month following the hire of the new employee, the City shall provide the Association 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 Association this information for the bargaining group at least every 120 days, excepted as specified in AB119.

Section 8. Association Dues

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.

The Association will be the custodian of records for such Deduction Authorization Form and will provide the City with certification list of employee name and amount of deductions consistent with the law.

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.

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.

8.1 Other Payroll deductions

The City shall deduct BPSEA 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. BPSEA shall provide the City with notice and a copy of BPSEA's certification form authorizing any increased deduction for dues, service fees, or premiums, and shall provide notice to BPSEA employees of such increases.

8.2 Hold Harmless

BPSEA 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 BPSEA dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

8.3 COPE Payroll Deduction

Consistent with the provisions in 8.1, 8.2 and 8.3 above, the City will allow for voluntary contributions to BPSEA's COPE (Committee on Political Education) Fund to be deducted from an employee's paycheck provided the employee signs an authorization form designating the flat dollar amount, and the contribution is on a monthly basis.

Section 9. No Strike

BPSEA agrees that participation in a strike shall subject employees to disciplinary action, up to and including discharge. BPSEA, 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 during the duration of this Memorandum of Understanding, nor shall the BPSEA, its representatives, or members, discriminate in any way toward anyone who refuses to participate in a strike. "Strike" means for the purpose of this section, any workplace action or slow down, sanction, instigate or suggest mass absenteeism, picketing or similar activity, which would interfere with or interrupt the normal work and operation of the City or any other actions deemed a strike action under MMBA or PERB. The City shall not lock out any members of BPSEA.

Section 10. Salary Plan

10.1 Compensation:

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

Effective July 1, 2020, a three and one-half percent (3.5%) increase for all salary ranges listed on Salary Schedule A in this unit.

Effective the first full pay period in July 2020, incumbents who are y-rated will be moved to schedule A of their classification except for the y-rated incumbent in the water quality technician II classification. The water quality technician II classification will not receive the 3.5% increase but will remain at the y-rate as of June 30, 2020 rate unless and until their position is no longer higher than the Schedule A rate for this classification.

10.2 Total Compensation Elements:

The following elements and any other elements required by AB646 total compensation will be surveyed to determine the mean average of total compensation including but not limited to:

Salary range of the benchmark classification including the top step salary of the market range

PERS pick-up (employer's contribution of employee's statutory share and of retirement cash differentials)

Maximum Healthcare pick-up (all employer contributions towards dental, vision, and health)

All other cash compensation

10.3 Labor Market Definition

The following agencies will be used by the City for compensation comparison purposes:

Agency
Vallejo
Fairfield
Richmond
Vacaville
Napa
Davis
Folsom
Pleasant Hill
San Pablo
El Cerrito
Pinole
Brentwood

Additional agencies and Districts for utilities only:

Contra Costa Water District

Central Contra Costa Sanitary District

East Bay Municipal Utility District

10.4 Compensation Definitions

The following are terms used throughout this MOU relating to forms of compensation. These are the definitions of those terms.

- **Basic Salary** = Salary listed on the most current Salary Schedule
- **Base Pay** = Salary listed on the most current Salary Schedule plus other pay including but not limited to differentials longevity and/or education if applicable
- **Straight Time Hourly Rate** = Base Pay / 173.3

Section 11. Salary Administration

11.1 Salary at Time of Employment

The salary plan provides a salary range for each classification with a minimum, maximum, and one or more intermediate steps. The beginning or normal hiring rate shall usually be at the first step of the range. Every new employee shall be paid the first step on employment except that the City Manager may authorize

employment at a higher step if the labor supply is restricted or the person to be hired is unusually well qualified.

11.2 Eligibility for Advancement in Pay

Employees may be advanced from Step A to Step B, and from Step B to Step C, from Step C to Step D and from Step D to Step E in accordance with the time-in-step guidelines outlined below and as merited by progressive improvement in job skills and work performance. The following time-in-step requirements shall apply before an employee gains eligibility for advancement in pay.

Step	Time-in-Step
A	6 months
B	1 year
C	1 year
D	1 year
E	Top Step

If warranted for the good of the service or when an employee demonstrates outstanding capacity in performing his/her duties, advancement may be made prior to completion of the above time-in-step requirements. In determining time-in-step it shall begin on the first day of the payroll period if employment occurs during the first fifteen (15) days of the period, otherwise time shall begin on the first day of the next payroll period. Advancement in pay when approved, shall be effective at the beginning of the first pay period immediately following completion of the time-in-step requirement outlined above. If an employee is on leave without pay for more than one month, the period shall be deducted from accumulated time-in-step.

The City agrees to form a committee comprised of management and bargaining unit employees to study the feasibility of adding additional steps to the salary range or reconfiguring the current A-E salary steps. Additionally, the committee will study the feasibility of employees advancing beyond a 5-step salary range based upon attaining specifically pre-defined and quantifiable job skills, education and/or certifications(s) directly related to their current job classification. BPSEA understands that the City has not committed any money to the implementation of the study results. This discussion will be included in the meet and confer process for the 2007 compensation study.

11.3 Attaining Advancement

An employee, in order to be advanced to a higher step, must demonstrate that advancement is merited on the basis of job performance. Performance ratings shall guide supervisors and department heads in determining whether step advancements have been earned and should be recommended to the City Manager. Performance ratings shall also serve as a means whereby an employee may benefit from a regular review of his or her performance by his or her immediate supervisor for: a) clarifying the supervisor's and the employee's expectations regarding job performance; b) reviewing the employee's performance of duties assigned and noting deficiencies requiring improvement or recognizing exemplary performance; and c) establishing employee developmental goals in appropriate career or performance areas.

11.4 Withholding Step Advancement

Department heads have the authority and responsibility to recommend to the City Manager that step advancements be withheld if they are not merited. Department heads shall keep their employees informed about their job performance, giving good work its proper recognition and any deficient work all possible guidance and assistance toward improvement. Department heads shall notify the employee as to the reasons for withholding step advancements prior to submitting such recommendation to the City Manager.

11.5 Change in Pay Upon Promotion

When employees are promoted, they shall normally receive the first step in the salary range for their new position. However, if such step is equal to or less than their present salary they shall receive the next step in the salary range of the new position which is immediately above their present salary.

11.6 Change in Pay Upon Demotion

When employees are demoted they shall be placed in a salary step in their new class which is the same as or immediately below the step held prior to demotion provided said demotion is not the result of disciplinary action.

11.7 Change in Pay Upon Reclassification

When a position is reallocated to a classification with a higher pay range, and the incumbent employee retains the position, he/she shall be placed at the first step immediately above his/her present salary.

11.8 Flexible Staffed Positions

Flexible Staffed Positions: Classifications noted as having a level I and a level II are considered flexibly staffed. Normally, employees are initially hired into the lower classification of these flexibly staffed positions.

At the six (6) month evaluation period, it shall be determined whether the employee is advancing satisfactorily to the higher-level position. Should it be determined that the employee is not satisfactorily advancing, the following work plan will be implemented at that time: Management shall identify in writing specific areas of deficiencies; and 1) develop a written work plan to correct deficiencies; and 2) demonstrate continuing deficiencies that training has failed to correct.

Upon successful completion of one (1) year in the lower classification where the employee has demonstrated the ability to meet the requirements of the higher classification, the employee will be promoted to the next higher class in the series. The criteria set forth in Section 11.3 above should be followed to determine if such promotion shall take place.

11.9 Acting Pay

1) Working out of Classification

Employees, other than those serving in a flexibly staffed position as defined in Section 11.8, may be assigned to perform the duties of a higher classification on an “acting” basis when a vacancy exists or when a special limited term assignment necessitates an individual to work out of class in such higher paid classification for a period in excess of five (5) consecutive working days. An “acting” assignment shall only be made by the department head and employees shall be provided with a written notice assigning them to the higher classification on an acting basis. Employees so assigned shall receive “acting” pay only after performing in the higher classification for a period of five (5) consecutive workdays.

Employees assigned by the department head to perform the duties of a higher classification on an “acting” basis, shall receive “acting” pay for each full day of assignment in such higher classification at the completion of the fifth day retroactive to the first day of assignment. Acting pay shall be at least five percent (5%) more than the employee’s salary in

his/her present classification; provided, however, in no event shall acting pay exceed the top salary step of the classification in which the employee is serving in an acting capacity.

2) Acting Supervisor

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 working in that capacity by one (1) additional hour of pay at the employer's regular straight-time rate.

Employees holding State Pest Control Advisor certification shall receive acting supervisor pay for each particular shift on which they perform these duties.

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 the Personnel Rules.

Employees receiving acting supervisor pay may not receive working out of class pay if performing the same higher duties.

11.10 Pay Period

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

11.11 Pay Upon Termination of Employment

An employee who is terminated, resigns or retires is entitled to receive 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, subject to the provisions on leave of absence; and
- 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.

Final pay upon termination 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.

After receipt of written notice to Employee, 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.

11.12 Longevity Pay

All employees shall be entitled to a two and one-half percent (2-1/2%) increase in basic salary upon completion of ten (10) consecutive years of full-time service.

Additionally, for each additional ten (10) consecutive year increment, i.e., twenty (20), thirty (30), forty (40) years, of full-time consecutive service, employees shall be entitled to an additional two and one-half percent (2-1/2%) increase in basic salary over the rate for the class in which the employee is employed.

Upon completion of ten (10) consecutive years of service and receiving longevity compensation, any further pay increase shall be in addition thereto, and not restricted or reduced by reason of the longevity increase.

Section 12. Holidays

12.1 Authorized Holidays

Employees shall be entitled to the following paid holidays:

1. New Year's Day (January 1st)
2. Martin Luther King Jr.'s Birthday
3. President's Day (3rd Monday in February)
4. Memorial Day (last Monday in May)

5. Independence Day (July 4th)
6. Labor Day (1st Monday in September)
7. Veterans' Day
8. Thanksgiving Day
9. Friday after Thanksgiving
10. Christmas Eve (December 24)
11. Christmas Day (December 25)
12. New Year's Eve (December 31)
13. One Personal Leave Floating Holiday to be used during the fiscal year.
14. Two December closure floating holidays to be used only during the period of December 26 – December 30 each year if required by the City to participate in a December closure. Employees normally scheduled to work and actually work during the December closure will receive up to two (2) floating holidays to use by the end of the fiscal year.

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

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

The City and BPSEA agree that if Cesar Chavez Day is ever declared a Federal Holiday it shall be incorporated herein as an observed holiday.

12.2 Work Performed on Holidays

1) Holiday Recall

Employees recalled to work on any of the holidays listed in Section 12.1 of this Memorandum of Understanding when they are not regularly scheduled to work shall receive a minimum of three (3) hours work for each such call out, or if three (3) hours work is not furnished, a minimum of three (3) hours pay at the rate of time and one-half (1-1/2) the employee's straight-time hourly rate of pay. In addition, the employee shall receive one (1) hour of compensatory time off for each hour actually worked not for each compensated hour. This section is not applicable to those employees on standby.

2) Holiday Pay (Water Treatment Plant)

Water Plant operators shall receive one and one-half (1-1/2) their regular straight-time rate of pay for hours worked on a holiday observed by the City. When a holiday observed by the City occurs on a scheduled non-work day, the employee shall receive one and one-half (1-1/2) times their regular straight-time rate of pay on their next scheduled work day.

3) All other employees scheduled to work on a holiday

In addition to the regular straight-time pay received for an authorized holiday, employees scheduled to work on a holiday shall receive one and one-half (1-1/2) times their regular straight-time rate of pay for every hour worked.

Section 13 Hours of Work, Premium Pay, Off-Duty Employment

13.1 9/80 Work Schedule

The City has a 9/80 work schedule. Generally, the hours for employees covered by this Memorandum of Understanding will be 7:00 a.m. to 4:30 p.m. However, with the approval of the department head, there may be variations in 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 following parameters apply to employees participating in the 9/80 work schedule:

- A. The exact schedule (i.e., every other Monday off, Friday off, hours of work, etc.) must first be approved by the department head. The work schedule will be based on a fourteen (14) day work period beginning mid-day on Friday or Monday to prevent overtime from occurring during any seven (7) day work week.
- B. This schedule will not preclude the City from implementing a different schedule (such as 5/8's) for training purposes, particularly for new employees. It is the City's intent to have the employee move into the flex schedule as soon as feasible.
- C. Employees working a 9/80 work schedule will not have to dock an hour of annual leave or administrative leave when they are off on a holiday. The holiday will be equivalent to a nine (9) hour day for employees working a 9/80 work schedule. If the holiday falls on a regularly scheduled day

off, then the employee will receive eight (8) hours of administrative leave which will need to be taken before the end of each fiscal year. This will not apply to the twelve (12) hour day or night shift water operator-in-charge in accordance with a separate agreement with the water treatment plant operators.

- D. When an employee takes a day of annual leave, sick leave, administrative leave or other leave benefit, the employee must use the number of hours which correspond to the employee's 9/80 schedule.
- E. Temporary changes in an employee's 9/80 work schedule must be approved by the employee's department head (i.e., employee hardship).
- F. In order to maintain the efficiency of government operations, the department head may determine that not all employees in the bargaining unit may participate in the 9/80 work schedule. Any employee whose schedule changes due to this clause must be notified in accordance with Section 13.2.
- G. In the event the City must discontinue the City wide 9/80 work period, affected employees shall resume the standard work week of five (5) eight (8) hour days after meeting and conferring with BPSEA.

13.2 Temporary Work Schedule Change

Department heads shall be authorized to make temporary (i.e., not to exceed ten (10) consecutive workdays) adjustments in employees' hours of work and work schedules, taking into consideration the wishes of the employees, and the needs of the City, as well as the workload of their respective departments. Permanent (i.e., in excess of ten (10) consecutive workdays) adjustments in work crew's hours of work and work schedules may be made after meeting and conferring with BPSEA.

The City shall make every effort to schedule shifts on a weekly basis and to notify employees at least five (5) working days in advance of their shift for said week.

13.3 Permanent Work Schedule Change

Permanent work schedule changes (i.e. in excess of ten (10) consecutive work days) in employees' hours of work and work

schedules may be made after a 30-day advance written notice has been given to the affected employee(s) by the department head, except in the case of emergencies due to natural disaster. The employee and department may agree to less than the full 30-day notice.

13.4 Night Shift Differential

For the purpose of this section, “Night Shift” shall mean a regularly scheduled work shift of eight (8) consecutive hours or more, which includes at least four (4) hours of work between the hours of 3:00 p.m. and 8:00 a.m. Overtime which is worked as an extension of an assigned shift shall not qualify an employee for a shift differential.

The rate of shift differential on swing shift (actual work between the hours of 3:00 p.m. and 11:00 p.m.) shall be two and one-half percent (2-1/2%) over the employee’s straight-time hourly wage rate and on graveyard shift [actual work between the hours of 11:00 p.m. and 8:00 a.m.], five percent (5%) over the employee’s straight-time hourly wage rate.

Water Plant operators assigned to the shift commencing at 1900 hours (herein designated as the night shift) shall receive the night shift differential of five percent (5%) of their straight-time rate of pay for all hours worked on said shift.

13.5 Water Treatment Plant – 12 Hour Shift Schedule

The City has established a 12-hour shift schedule. Modifications to the shift schedule may be made by mutual agreement of BPSEA and the City. The current schedule example is outlined in Appendix B (the dates referenced in the example are for calendar year 2018). FLSA work weeks are established and vary depending on shift employee is assigned.

Shifts shall rotate each six (6) months. The City will provide at least thirty (30) days advance notice prior to implementing any change in the shift schedule provided herein.

Alternative schedules, such as 4/10, may be available for certain shifts when staffing levels and scheduling options permit such schedule.

13.6 Off-Duty Employment

No employee may accept gainful employment during off duty hours unless prior written approval is obtained from the City Manager or City Manager's designee after recommendation of the department head. Such approval is subject to review and cancellation for just cause at any time by the City Manager.

Section 14. Overtime Work, Pre-Scheduled Overtime, Emergency Overtime

14.1 Overtime Work

All work performed in excess of an employee's normal workday or in excess of an employee's normal and/or scheduled work week or work period shall be considered overtime work.

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

14.2 Compensation for Overtime Work

Employees performing compensable overtime work shall be paid time and one-half at the employee's straight-time hourly rate of pay, or at the option of the individual employee, compensation in the form of compensatory time off at the rate of one and one-half (1-1/2) in lieu of pay. The maximum amount of compensatory time off an employee may have credited to his account at any one time shall be forty (40) hours. The department head in his/her sole discretion may permit an employee to accrue compensatory time off in excess of the forty (40) hour maximum. The employee may schedule the use of accumulated time off with the approval of the department head. In addition, the department head may schedule use of accumulated time off without the approval of the employee.

With the exception of compensatory time off, all paid leave time will be considered actual hours worked when computing overtime hours after a workday or a forty-hour workweek.

14.3 Meal Allowance

The City further agrees to provide a meal allowance for employees working more than four (4) continuous hours of overtime at the rate of \$10.00. This meal allowance will be paid without the requirement of a receipt.

The aforementioned overtime rate (Section 14.1) and meal allowance shall be all inclusive and no additional compensation will be paid. Water Plant operators shall have their meals and rest periods on the job as operating conditions permit.

14.4 Pre-Scheduled Overtime

An employee who is scheduled to work at a time non-contiguous to their normal shift shall receive a minimum of two (2) hours of work or pay in lieu thereof at the rate of one and one-half (1-1/2) times the employee's straight-time hourly rate of pay.

14.5 Unscheduled Overtime

An employee who is recalled to work at a time non-contiguous to the employee's regular work shift or is called out to work for emergency purposes, shall receive a minimum of three (3) hours of work or pay in lieu thereof at the rate of one and one-half (1-1/2) times the employee's straight-time hourly rate of pay. If the employee is called out or recalled more than once during a single three (3) hour period only one (1) call out shall be authorized.

Employees called out between the hours of 3:30 p.m. and 10:00 p.m. Monday through Friday will perform a minimum of two hours of work if the call-out is less than two (2) hours providing there are work orders to be completed. This section excludes holidays, weekends, and call-outs after 10:00 p.m.

If the employee is called out or recalled more than once during a single two (2) hour period only one (1) call out shall be authorized.

Field and laboratory employees in the Public Works Department and the Parks and Community Services parks landscape and building maintenance workers who are called into work for unscheduled overtime and use their personal vehicle to respond to a call will be reimbursed for their mileage to and from their home residence to assigned work location up to a maximum of 45 miles and any bridge tolls. Unscheduled overtime is defined as time worked when employee is called to work without prior notice.

14.6 Standby Time

There is a need to maintain City operations seven (7) days a week, including holidays, and after regular hours. Personnel must be scheduled to meet these needs; department heads will discuss the scheduling frequency of shift rotation with the affected employees. Some areas of the City's responsibility necessitate the availability of employees for call-out in emergencies. To insure this availability

of personnel, a procedure called "Standby Time," providing compensation, has been established as described below.

Weekend, holiday, and after hours standby shall be compensated for by paying the involved employee, six (6) hours of straight-time pay for every twenty-four (24) hours of standby time; less than twenty-four (24) hours to be prorated. In the event an employee on standby is called out, he/she shall receive a minimum of three (3) hours pay at the rate of one and one half (1-1/2) times the employee's straight time hourly rate of pay. Employees will not receive compensatory time in addition to the paid overtime hours. If the employee is called out more than once during a single three (3) hour period, only one (1) call-out shall be authorized. Employees called out between the hours of 3:30 p.m. and 10:00 p.m. Monday through Friday will perform a minimum of two (2) hours of work if the call-out is less than two (2) hours providing there are work orders to be completed. This section excludes holidays, weekends and call-outs after 10:00 p.m.

The City shall provide paging devices for standby employees so that the employee is not required to remain at his/her place of residence. The employee will be required to remain in the greater Benicia area which is defined as that area that is within thirty-five (35) minutes driving time from their regular place of employment. Standby employees who use a personal vehicle to respond to a standby call will be reimbursed for their mileage for actual miles driven to and from work if they are not residents of the City of Benicia. Employees who reside within the City of Benicia and use a personal vehicle to respond to a call while on standby shall not receive mileage reimbursement for actual miles driving to and from work. Employees who live in town may take a City vehicle home to use when called out while on standby, if available.

Employees not on standby who are called into work and use their personal vehicle to respond to a call will be reimbursed for their mileage from their home residence to assigned work location up to a maximum of 45 miles and bridge tolls.

14.7 Safety Concerns – Recall or Standby

Employees, including shift operators, called back to work after midnight may arrive at work past their normal starting time that same day a minimum of two (2) hours to a maximum of the amount of time that they worked past midnight. In all instances of the use of this time the employee must make certain that the

supervisor is aware of the time they will be arriving to work for their next shift.

Upon supervisor's approval, an employee recalled within three (3) hours of the beginning of their regular work schedule, may take safety hours at the end of that workday.

The employee shall be responsible for any additional time off, i.e., taken through the use of other accrual leaves like compensatory, administrative, vacation, or sick leave.

Section 15. Vacation Leave and Annual Personal Leave

15.1 Vacation Leave

The authorized annual vacation leave granted employees shall be as follows:

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

No vacation leave may be taken by an employee during his/her first six (6) months of employment except for an emergency as approved by the department head for hours already accumulated with the six months. At the completion of six (6) full months of service, an employee is eligible to use vacation benefits as described above.

15.2 Earning Vacation Leave

Full vacation leave as set forth in Section 15.1 shall be earned by:

- 1) An employee on sick leave with pay, including an employee receiving benefits under the City's Supplemental Sick Leave Benefit.
- 2) An employee on paid leave of absence, due to a disability arising from an on-the-job accident or injury while working for the City.
- 3) An employee on jury leave.

Vacation leave as set forth in Section 15.1 shall not be earned by an employee on an unpaid leave of absence.

An employee shall not use leave they have not accumulated.

15.3 Scheduling Vacation Leave

The scheduling of vacation leave shall be determined by the department head 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.

15.4 Holiday During Vacation Leave

An employee shall not be charged vacation leave for a holiday occurring during the employee's vacation leave.

15.5 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.

15.6 Annual Personal Leave Allowance

Employees with less than fifteen (15) years of service to the City shall earn one (1) day of personal leave per year, prorated on a quarterly basis. The employee may use such leave for any purpose subject to advance approval of the employee's absence. The personal leave day may be used within the contract year and may not be carried across the contract or fiscal year.

The annual personal leave day allowance for those employees with fifteen (15) or more years of service to the City shall be two (2) days per year, prorated on a quarterly basis. The employees may use such leave for any purpose subject to advance approval of this absence. The annual personal leave days must be used within the contract year and may not be carried across contract or fiscal year.

An employee shall not use leave they have not accumulated.

15.7 Vacation Accrual Limits

Employees covered by this Agreement may exceed vacation accrual limits during a calendar year, however, by January 20th of each year, an employee's total earned but unused vacation leave shall not exceed three hundred twenty (320) hours. It is each employee's responsibility to schedule the use of vacation time so as not to

exceed this maximum amount of vacation accrual. In December of each calendar year, the City will allow employees who have in excess of 320 hours of accrued vacation leave to convert forty (40) hours of vacation leave to sick leave.

Effective 6 months after the implementation of the new ERP (financial payroll software) employees covered by this agreement may not exceed accrual cap of 320 hours. Employees at that cap will cease accruing vacation leave until their balance drops below the cap.

Employees will have the option to request, prior to the pay period in which they will reach 320 hours of vacation, the ability to convert up to 40 hours of vacation to sick leave. This request can only be made 1 time in a 12-month period. It is the employee's responsibility to monitor their leave balances and make the request to convert vacation to sick leave.

Section 16. Sick Leave

16.1 Eligibility and Accrual

Employees shall be eligible to accrue sick leave beginning the first day of the month following the employee's completion of one (1) month of service.

Employees shall accrue sick leave at a rate of eight (8) hours for each calendar month of service. Employees shall accrue full sick leave while on paid leave of absence, including sick leave and jury leave. Sick leave shall not be earned by employees on unpaid leave of absence or paid industrial leave (PIA).

16.2 Usage of Sick Leave

1) Permissible Usage of Sick Leave

- a) Sick leave is provided to continue the salary of an eligible employee who is absent from work because of an illness.
- b) Family Member Illness / Medical Appointment: Family Care (Labor Code Section 233). An employee may use one half of their annual accrual worth of sick leave to care for an immediate family member. The illness does not have to be serious in nature and includes doctors (medical and dental) 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.

- c) Three (3) days of accumulated sick leave may be used with prior approval of the employee's department head for critical illness in the immediate family when death appears to be imminent. Sick leave granted in accordance with the provisions in this subsection shall be so documented on the employee's time sheet and in the employee's personnel records. Immediate family members include: spouse, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren and members of the employee's household.
- d) 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

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 sustained while on unpaid leave of absence;
- B) Disability arising from sickness or injury related to compensated employment other than with the City;
- C) Disability arising from sickness or injury while receiving compensation from the City for an industrial accident pursuant to Section 18.

3) An employee shall not use leave they have not accumulated.

16.3 Accumulation

Accumulation of sick leave by all employees shall be unlimited.

16.4 Notification

To receive sick leave, an employee must notify the employee's supervisor before the employee is scheduled to begin the employee's daily duties. Each Department/Division will disseminate, and place on file with Human Resources, a phone number to call when calling in sick. A department head may waive this requirement upon presentation of a reasonable excuse by employee.

16.5 Return to Employment Following Sick Leave

When an employee returns to duty after four (4) or more days absence chargeable to sick leave, the employee's department head or the City's personnel officer shall 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 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 the action the City Manager considers appropriate.

Section 17. 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.

Section 18. MOU Leave FYs 2019/2020 and 2020/2021

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

Effective the first pay period following Council approval of this agreement, employees will accrue the value of 3.33 hours of "MOU leave" per month for fiscal year 2019-20 and 20 hours of "MOU leave" for fiscal year 2020-21. This accrual shall cease effective June 30, 2021. 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.

18.2 Use of MOU Leave

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

18.3 Payout of MOU Leave

If any employee has not used his or her MOU leave by January 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 January paycheck. MOU leave is not carried forward into the next fiscal year.

18.4 Sunset

MOU Leave sunsets after the term of this contract.

Section 19. Leave of Absence

19.1 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.

19.2 Procedure

- 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.
- 2) A department head may grant an employee a leave of absence without pay for not more than ten (10) working days when it is in the best interest of the City. The City Manager must approve a leave of absence without pay exceeding ten (10) working days.
- 3) An employee shall be entitled to payment for any earned vacation and accumulated overtime at the beginning of an approved leave of absence.

19.3 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. Any failure of the employee to appear for a scheduled work day without proper notification to the supervisor is an unauthorized leave of absence. In addition, failure of the employee to follow specified procedures and receive proper authorization for use of sick leave or vacation leave may be deemed an unauthorized

leave of absence. The Department Head may require a corroborating doctor's slip if the employee is returning from an unauthorized/unscheduled leave of absence.

An unauthorized leave of absence is grounds for disciplinary action, including dismissal.

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.

19.4 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.

When an employee is released from jury duty, the employee shall report to work for the balance of the day.

19.5 Bereavement Leave

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

In the event of a death in the immediate family of an employee, he/she shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three (3) regularly scheduled working days. However, up to an additional two (2) days may be granted for out-of-state funerals. This provision does not apply if the death occurs during the employee's paid vacation, or while the employee is on leave of absence, layoff, or sick leave.

For the purposes of this section immediate family shall be defined as follows: spouse, children, step children, father, stepfather, mother, stepmother, brothers, stepbrothers, sisters, stepsisters, mother-in-law, father-in-law, sister-in-law, brother-in-law,

employee or spouse's grandparents, grandchildren, adopted children, children under guardianship, domestic partners and members of the employee's household.

A department head 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.

19.6 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.

19.7 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 20. Paid Industrial Accident Leave

20.1 Eligibility

Employees shall be eligible for paid industrial accident leave (PIA) provided, however, that the employees claim for state workers compensation must be approved and further provided that the injured employee shall immediately report the accident to the employee's supervisor or if the supervisor cannot be contacted, the employee must notify the police communication center immediately.

20.2 PIA Benefits

The City agrees that each employee shall be granted paid industrial leave (PIA) if the claim is approved the State Workers' Compensation with the City paying full, basic salary during such leave. "PIA" shall begin on the first day of said industrial accident and shall extend for a maximum of one year. When an employee is on "PIA," the employee is charged neither vacation nor sick leave, but during this time, the employee does not accrue vacation or sick leave. The employee is not eligible for a step increase while on "PIA," and the employee's anniversary date will be adjusted so that

the employee will observe the normal working period between steps.

Section 21. Transfer

21.1 Transfer Between Divisions Within a Department

A regular employee may be transferred between divisions within a department at the discretion of the department head.

21.2 Transfer Between Classifications

Upon approval by the Personnel Officer, an employee may be transferred by the appointing authority at any time from one position to another in a comparable class. For purposes of this section, a comparable class is one with substantially the same salary range, involving the performance of similar duties and requiring substantially the same basic qualifications. No regular employee shall be transferred to a position for which they do not possess the minimum qualifications.

21.3 Lateral Transfer Between Departments

A regular employee may be transferred between departments with the consent of the employee and the approval of the department heads involved. The City Manager may offer such transfer for purposes of efficiency and/or economy.

- 1) Conditions
The following conditions must exist:
 - a) An authorized position must be vacant.
 - b) The employee requesting transfer must meet the minimum qualifications for the vacant position.
 - c) All eligible individuals who submit applications to the City's Personnel Office will be interviewed by the Department head or his designee when a vacancy exists and will be considered prior to any other recruitment process.
 - d) Factors to be considered regarding a transfer will include, but will not be limited to, related experience, job performance, attendance, and seniority with the City. If all other factors are substantially equal, when two or more employees request the same transfer, seniority will prevail in the selection of the transferee.
 - e) The transfer of a permanent employee from one department to another may be made with the consent of the employee and the department heads concerned. The City Manager may approve a transfer for the purposes of

economy and efficiency in the operations of the City government.

- f) A transfer shall not be used for the purpose of evading the provisions of the personnel ordinances regarding promotion, advancement or reduction.

2) Procedure for Transfer

Whenever a City authorized permanent position becomes vacant, the City shall:

- a) Post a transfer job announcement for a period of five (5) working days in the City personnel office, all departments and divisions, prior to any other notice to recruit and include the following information:
 - job title
 - job location
 - department and location
 - final filing date
- b) Employees applying shall complete a standard application for employment form and shall submit it to the Personnel Department by the posted deadline.
- c) The City shall notify applicants of their acceptance or rejection within ten (10) working days after the department head has interviewed all applicants for the transfer.
- d) When a transfer opportunity is posted and not filled, the position shall be filled in accordance with the City 's current Personnel Rules.

It is the intent of this policy to provide an equitable method of meeting the City 's needs as well as relocating personnel with the objective of matching employee skills with existing vacancies. It is further the intent to provide a systematic and uniform means in which employees may relocate from one site to another.

Section 22. Deferred Compensation

Employees may participate in the City 's deferred compensation plan.

Section 23. Uniform Allowance

All employees will wear approved City uniforms or will adhere to the dress code established by the Department Head of their respective departments. See Appendix A

Section 24. Educational Reimbursement

The educational Reimbursement Program is designated to encourage employees to continue their self-development and career development by enrolling in classroom courses which will prepare them in new concepts and methods needed to meet the changing demands of City service. The City agrees to pay \$1,000 per fiscal year, towards the cost of books and tuition for courses of study undertaken by employees during that fiscal year pursuant to this Program and provided such courses have been approved by the employee’s department head.

Section 25. Insurance

25.1 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 the first full pay period after BPSEA ratification and City Council approval on its regular agenda, the City shall contribute up to the maximum monthly contribution regardless of what Health Plan is selected by the employee as follows:

Employee Only:	\$742.00
Employee plus one:	\$1,544.00
Employee plus family:	\$2,105.00

Effective July 2020, the City shall contribute up to the maximum monthly contribution regardless of what Health Plan is selected by the employee as follows:

Employee only:	\$762.00
Employee plus one:	\$1,594.00
Employee plus family:	\$2,180.00

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 written proof of alternative health plan coverage other than the ACA exchange of dual coverage on their health plan to receive the following maximum contribution: this amount is to be added to the employee’s paycheck.

The City's maximum contribution for employee who have dual coverage shall be a maximum of \$682.00.

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 over medical in lieu contribution.

25.2 Life Insurance

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

25.3 Retirement

The City contracts with the Public Employees' Retirement System (PERS) to provide retirement benefits for employees. The City's contract with PERS shall provide the following additional benefits:

- A. For employees hired on or before June 30, 2011
 - 1) One-year highest PERSable compensation benefit, as contained in the California Government Code, Section 20042, for miscellaneous employees.
 - 2) 1959 Survivor Benefits at the increased level, as provided for in Government Code Section 21573.
 - 3) Credit for unused sick leave, as provided for in Government Code Section 20965.
 - 4) 2.7% at 55 benefit option.

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

For employees hired on or before June 30, 2011, the City amended its contract with the Public Employees' Retirement System (PERS) for miscellaneous employees to include the retirement benefit option of 2.7% @ 55 in accordance with Government Code Section 21354.5. This benefit became effective the first of the month following the final amendment process and approval by PERS. The City and BPSEA understand that this contract amendment would cover only those retiring after the date of implementation.

In addition, employees will assume responsibility for payment, by payroll deduction, of the eight percent (8%) employee contribution

into the employees' retirement contribution account. The City will adopt the IRS 414(h)(2) provision allowing for payment of the eight percent (8%) on a pre-tax basis, as long as allowable by the IRS.

B. For employees hired after June 30, 2011

For employees hired after June 30, 2011, the City through its contract with CalPERS provides for the 2% at 60 formula, average three (3) compensation periods, and other enhancements, if any, consistent with the CalPERS contract in effect with the City for this tier. Employees will be required to pay the seven percent (7%) employee share of PERS on a pre-tax basis, as long as allowable by the IRS.

C. PEPRA

1. Employees with CalPERS Reciprocity

Employees hired on or after January 1, 2013, who had service with another CalPERS agency or public retirement system with reciprocity prior to January 1, 2013, and a break in service of less than 6 months and consider legacy employees by PERS AB240, shall be subject to the PERS pension formula of 2@60 and any other enhancement, if any consistent with the CalPERS contract in effect with the City for this tier. Employees shall pay the employee's statutory employee's contribution for these benefits of seven percent (7%).

2. Employees without CalPERS Reciprocity

Employees hired on or after January 1, 2013, shall be subject to the AB340 PERS pension formula of 2@62. Employees shall pay 50% of the City's normal cost rate for the 2@62 formula as determined by CalPERS.

D. CALPERS Persability

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

Section 26. Layoff

26.1 Procedure

The procedure for layoff will be as defined in the City of Benicia Personnel Rules.

26.2 Order of Layoff

Employees within the class of position involved shall be laid off in the following order of appointments: Temporary, Part-Time Probationary, Full-Time Probationary, Part-Time Regular, and Full-Time Regular. The order of layoff of Part-Time Regular and Full-Time Regular employees shall be based on both the length of service of the employee in the classification involved and the employee's job performance as documented by their last three (3) performance evaluations. When considering the length of service of the employee, the ratings earned over the last three (3) annual evaluation periods shall be taken into consideration. The employee shall be credited with an additional two (2) years of service for each overall "Exceeds Expectations" rating and one (1) year of service for each overall "Meets Expectations" rating during that three (3) year period. Employees with the least seniority shall be laid off first.

If an employee has "bumping rights" to a previously held lower classification, then the affected employee's overall City seniority becomes the determining factor for layoff in that lower classification.

Section 27. Grievances/Disciplinary Appeals

27.1 Definition

A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding, or rules, regulations, resolutions, ordinances and existing practices which specifically govern personnel practices and working conditions of unit members. A disciplinary appeal is an appeal by an employee of a discharge, demotion, reduction in pay or suspension without pay. The process will be determined by the employee's selection as set forth in Section 9.11 of the City of Benicia Personnel Rules.

27.2 Procedure

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

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

- 1) The grievance shall be presented in writing either by the employee or by an authorized BPSEA representative to the

designated supervisor of the employee within ten (10) working days after the cause of such grievance occurs.

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

arbitrator and a court reporter shall be shared equally by BPSEA and the City. Each party, however, shall bear the cost of its own presentation including, but not limited to, preparation and posting hearing briefs, if any.

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

27.3 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 BPSEA and unless such dispute falls within the definition of a grievance as set forth in Section 25.1.

27.4 Change to Memorandum

Proposals to add to or change this Memorandum of Understanding or written agreement or side letter agreement 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.

27.5 Disciplinary Action

No appeal 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.

27.6 Compensation Complaints

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of the Memorandum of Understanding shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and if not detailed in the Memorandum of Understanding which results from such meeting and conferring process shall be deemed withdrawn until the

meeting and conferring process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

27.7 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/appeals of employees represented by BPSEA 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 25.2 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 25.2 above shall be taken if action on the complaint or grievance/appeal has been taken by the Civil Service Commission, or if the complaint or grievance/appeal is pending before the Civil Service Commission.

27.8 Steward

Three (3) stewards and three (3) alternate stewards shall be appointed by BPSEA to assist in resolving workplace issues and other representational duties including, but not limited to, handling grievances.

The City shall provide four (4) hours of paid time each contract year to each steward and alternate for steward's training. BPSEA will give one (1) months' notice to the City before scheduling training.

Grievances which may arise and which cannot be adjusted on the job shall be reported to BPSEA by the steward; provided, however, in no event shall the steward or BPSEA order any changes, and no changes shall be made except with the consent of the City. If the aggrieved employee desires the assistance of a steward as provided in Steps 1, 2 or 3 of the grievance/appeal procedure, the City shall afford said steward reasonable time off during working hours without loss of compensation or other benefits to investigate and take up said grievance/appeal. The grievant and/or the area's steward shall obtain the specific approval of the supervisor or, in the latter's absence, another authorized City management official before leaving their duties or work situation or assignment for the purpose of investigating and/or processing a grievance/appeal.

BPSEA will also be informed when a new BPSEA unit member is hired. The City will include a BPSEA informational packet, with the City's orientation papers, for each new employee.

27.9 Performance Evaluation Committee

Within ninety (90) days of the effective date of this successor MOU, the parties agree to form a committee to discuss the current performance evaluation system. The committee will be made of up to 3 members of the BPSEA and up to 3 representatives from the City. The Employee Performance Evaluation Committee's goal will be to present, in the second year of this agreement, consensus recommendations to the City Council on the use of Performance Evaluations.

Section 28. Safety

The City and BPSEA shall expend every effort to see to it that the work performed under the terms and conditions of this Memorandum of Understanding is performed with a maximum degree of safety consistent with the requirement to conduct efficient operations.

Section 29. Personnel Files

Every City employee shall have the right to inspect and review any official personnel record relating to his or her performance as an employee or to a grievance concerning the employee which is kept or maintained by the City's Human Resources Department; provided, however, that letters of reference are exempted from the provisions of this section as required by law.

The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the City. The employee may obtain copies of the contents of his/her official personnel record upon written request.

The City shall provide an opportunity for the employee to respond in writing, or personal interview, to any information about which he or she disagrees. Such response shall become a permanent part of the employee's personnel record. The employee shall be responsible for providing the written responses to include as part of the employee's permanent personnel record. The employee will be notified of any information derogatory in nature entered into his/her official personnel record.

This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.

Section 30. Closing Clauses

The effective date of this Memorandum of Understanding shall be July 1, 2019 and shall remain in effect until June 30, 2021. Nothing in this section shall be retroactively applied unless otherwise provided herein.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this _____ day of _____, 2019.

**BENICIA PUBLIC SERVICE
EMPLOYEES' ASSOCIATION, INC.**

CITY OF BENICIA

President

Lorie Tinfow, City Manager

Vice President

Alan Shear, Assistant City Manager

John Dalrymple, CEA

Kim Imboden, HR Manager

For BPSEA

Dania Wong, Sloan Sakai Yeung

For BPSEA

APPROVED AS TO FORM BY

City Attorney: _____
Ben Stock, Burke William Sorensen

Appendix A - Uniforms

Article of Clothing	“T” Shirts and/or Polo Shirts	Button Down Shirts	Uniform Pants	Laboratory Coat	Shop Coat	“T” Shirts and Polo Shirts	Winter or Summer Jacket	Coveralls	Safety Boots	Jeans Option
Departments Affected	PW	PW	PW	PW	PW	P&CS	P&CS and PW	P&CS and PW	P&CS and PW	P&CS and PW
Number Allocated to Each Individual	6 “T” or 1 Polo in lieu of 2 “T” up to 3 Polo Maximum	**	<u>11</u> ** for PW	up to 3	up to 5	5 Polo 5 “T”	1*	<u>3 for P&CS</u> ** for PW	n/a	n/a
Responsible for Purchase	City Provides	City Provides (through Uniform Service)	City Provides	City Provides	City Provides (through Uniform Service)	Employee Purchase – City Reimbursed up to \$220 to Purchase or Maintain the required safety-toed boots, socks and inserts.	City Pays through Employee Payroll on July 1 st each year or upon a new hire - \$200 to Purchase, Maintain and Launder. ***			
Color and Positions	Dark Blue	Gray/Orange for PW	Navy Blue for WWTP	White for Lab	Navy Blue for	5 Orange	Navy Blue for WTP	Blue for Equipment	n/a	WWTP operator

Affected	only for WTP and Equipment Services – WWTP choice of Lt Blue and Dark Blue – Orange only for Corp Yard Field	Maintenance, Medium Blue for Equipment Services and WTP, Lt Blue with Navy Stripes for WWTP	and Equipment Services. Gray for Corp Yard Mtn.	Techs, and Water Quality Techs	Equipment Services, and WWTP Maintenance Mechanic	and 5 Tan or Blue for all P&CS positions listed below	operators, Orange for Mntc Mechanics – Dark Blue for WWTP – Corp Yard selects from Orange or Green.	Services, and Building Maintenance Gray for WTP, WWTP, PW Maintenance		s are exempt due to health and safety reasons
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Positions Covered: Maintenance Worker III, Field Utilities Series, Parks Landscape and Building Maintenance Series, Water Treatment Plant Operator Series, Wastewater Treatment Plant Operator Series, Laboratory Technician Series, Maintenance Foreman, Maintenance Custodians, Senior Mechanic, Mechanics, Maintenance Mechanics, Engineering Technician Series and all Inspectors.

* Replaced as needed, but no more than once each fiscal year.

** Quantity of 7 if employee elects to receive jean allowance and Quantity of 11 if they do not receive jean allowance.

***Upon appointment of a new employee, or July 1st each year, Public Works employees may opt to stop receiving their maximum five (5) changes (11 total) of uniform pants in exchange for a \$200.00 per year jean allowance. This allowance covers the cost for purchase, maintenance and laundering of jeans. Employees opting for the jean allowance must also agree to reduce their allotment of coveralls and button shirts to seven (7).