

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF BENICIA AND

BENICIA PART-TIME UNIT

BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION

(BPSEA-PT), INC.

TERM: November 1, 2019 to October 31, 2021

(Approved via Council Resolution 19-106 on November 5, 2019)

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EXHIBIT A Updated May 2019 and will be updated next
in May 2020. Copy of document available in HR
Dept.

EXHIBIT B Updated November 2019

Section 1. Preamble

The terms and conditions set forth in this Memorandum of Understanding have been discussed and entered into in good faith between representatives of the City of Benicia, hereinafter referred to as the "City," and the Benicia Public Service Employees' Association, Inc., hereinafter referred to as the "BPSEA," or the "Association," for the purpose of promoting harmonious relations between the City and the 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

Pursuant to the Meyers-Milias-Brown Act of the State of California and the provisions of the Employer's/Employee Labor Relations Resolution No.5324 the City acknowledges that BPSEA is the majority representative for the purpose of meeting and conferring, negotiating, regarding wages, hours, benefits and other terms pertaining to the conditions of employment for all employees specified in Exhibit "A" or as appropriately modified in accordance with the Employer/Employee Resolution, and agreed to by the City and the Association.

Exhibit "B" will list the classifications that are eligible for recognition. This list will be updated as necessary. Parties agree that Exhibit B shall only include BPSEA classifications that are used as part time employees and excludes any part time classifications that are in other units and language in the MOU shall memorialize this. An updated Exhibit B, updated in November 2019 is attached.

Recognition is limited to Employees meeting the following criteria:

Employees must have worked at least 450 hours per fiscal year based on hours worked for the twelve (12) months pay period ending with the last pay period in May of each year shall be included for recognition/benefit purposes for the contract year beginning the following July, for as long as they continue to be regularly scheduled to work.

It is agreed by the City and the Association that employees meeting these criteria will be listed in Exhibit "A". (Exhibit A will be updated annually by the City.)

Section 3. Duration

It is agreed by the City and the Association that except as specifically provided otherwise or as agreed to by the City and the Association any resolution, ordinance or action of the City Council necessary to implement this MOU shall be considered effective upon ratification by the Union and City Council approval on its regular agenda in accordance with the Brown Act. This MOU shall remain in full force and effect until October 31, 2021 and the provisions of this MOU shall continue after the date of expiration of this MOU in the event the parties are meeting and conferring on a successor MOU.

The terms and conditions of this MOU shall prevail over any conflicting provisions of the Benicia City Council Charter, ordinance, resolutions and policies of the City Benicia and/or any Federal/State statutes, rules, regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement or are, pursuant to decisional or statutory law, superseded by this provision of an agreement similar to this MOU.

Section 4. Employee Data

The City shall provide the Association a regular list of all unit members on a six (6) month basis, included shall be the employee's names, address, department, and job title for the purpose of Association update data and Association informational material for unit members.

Section 5. Conclusiveness, Modifications and Savings

This Memorandum of Understanding shall be in force after its expiration for thirty (30) days, by mutual agreement, where negotiations between the City and BPSEA have not resulted in a new Memorandum of Understanding.

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.

This MOU contains all of the covenants, stipulations, and provisions agreed upon by both parties. Therefore, for the life of this MOU, neither

party shall be compelled, and each party expressly waives its rights to request the other to meet and confer concerning any issue herein.

Any agreement, alternation, understanding, variation, or waiver or modification of any terms or provisions of this MOU shall not be binding upon parties unless contained in agreed written document (side letter) executed by authorized representative of the parties.

Section 6. Association Membership and New Member Orientation

6.1 The City shall deduct paychecks of unit employees the regular Association Dues upon written certification by an authorized official of the Association and the City shall transmit the monthly deductions to the Association. In the event that an employee challenges the deduction based on an assertion that the employee did not fill out an Association dues deduction card, the Association shall provide the City a copy of the card for verification.

The Association will provide a written certified thirty-day notice to the City of any changes in the amount of the dues to be deducted from employee paychecks. 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.

To the extent allowable by law, employee in the unit may terminate Association dues during the period of December 1 through December 30 of year of the MOU by notifying the Association in writing of employee's termination of Association dues.

6.2 COPE Payroll Deduction

The City will allow for voluntary contributions to the Association's COPE (Committee on Political Education) Fund to be deducted from an employee's paycheck provided the employee provides the Association authorization. Upon certified written notice to the City, the City shall deduct the flat dollar amount on a monthly basis.

6.3 Hold Harmless

The Association 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 Association dues, service fees or charitable

contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

6.4 New Employee Orientation

The City shall provide the Association the following information: name, job title, department, work location, work, home, personal cellular telephone number, personal email address, and home address of any new employee within thirty (30) days of hire or by the first pay period of the month following eligibility to become Association members unless the employee does not provide such information to the City.

The City will provide in the part-time employees' orientation packet a mutually agreed upon notice describing BPSEA's role and possible future membership. Each year BPSEA, upon receiving an updated Appendix A, will have the opportunity to have a twenty (20) minute orientation with any employee newly placed on Appendix A. The time and location of the orientation will be coordinated between Human Resources and BPSEA.

Section 7. Association Notification

Except in cases of bona fide emergencies, the Association shall be given a minimum of seven (7) workdays advance written notification of any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by Benicia City Council, or management, and shall be given the opportunity to meet and confer with the City representative prior to its adoption.

Section 8. 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 employees time off, if required, to attend negotiation meetings.

Section 9. 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 10. Grievance Procedure

The City and Association mutually acknowledge that part time employees have At Will status, without any property interest in their position(s). However, represented employees are afforded the opportunity to seek internal resolution of any disciplinary actions having a financial impact on the employee or any issue or dispute related to the employer's interpretation and implementation of the provisions contained in this MOU.

Represented employees may appeal any such actions to their Department Head within fifteen (15) working days of the disciplinary action or employer's action related to the interpretation and implementation of the provisions contained in this MOU. (Working days are defined as days that City Hall is open.) The Department Head will meet with the employee and a representative of their choosing within fifteen (15) working days of the appeal. If the matter continues to be unresolved, the employee may, within fifteen (15) working days, appeal to the City Manager. The City Manager will meet with the employee and their representative. Within fifteen (15) working days, the City Manager shall issue his/her decision. The decision of the City Manager shall be final.

Section 11. Association Steward

The Association shall designate three (3) employees within the "Part-Time Employees Unit" as shop stewards and will furnish the names of these elected shop stewards and place of employment to the Director of Human Resources on an annual basis. If the designated steward is not available the President or any other designated shop steward shall be allowed a reasonable amount of release time for the purpose of representing a unit employee within the steward's area of representation in the filing or processing of identified grievances as long as there is no disruption of work in the employees department. Stewards shall obtain permission before leaving their place of employment and shall inform the Human Resources Manager before leaving their place of employment; release time shall not be unreasonably denied. This Article shall be

limited to work hours only. It is agreed the City shall not pay stewards for time spent in handling grievances when they are not regularly scheduled to work.

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

The City will provide eight (8) hours of paid leave time for three (3) stewards to attend a one (1) day internal reorganization meeting. This paid leave time will sunset on June 30th of each year and cannot be rolled over to another year.

Section 12. No Strike

The BPSEA agrees that participation in a strike shall subject employees to disciplinary action, up to and including discharge. The 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 industrial 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. The City shall not lock out any members of BPSEA.

Section 13. Wage Adjustments

13.1 Effective the first pay period after Association ratification and adoption of this MOU by the City Council on its open session agenda in conformance with the Brown Act there will be a three and on-quarter percent (3.25%) increase for salary ranges that are not tied to minimum wage. Effective the payperiod in effect November 1, 2020, there will be a three and one-half percent (3.5%) increase for salary ranges that are not tied to minimum wage.

13.2 Effective January 1, 2020, the salary rates in this unit that will fall below the new minimum wage shall be adjusted to the new minimum wage of \$13.00 per hour. On January 1, 2020 the minimum wage for members in this bargaining group shall be \$14.00.

Section 14. Step Increases

Part-time employees in BPSEA classifications that have steps will be eligible to receive a salary step increase after 12 months and 250 hours worked based on satisfactory performance evaluation. However, at no time shall more than one step increase may be given a Part-Time employee in any twelve (12) month period regardless of the amount of hours worked. If performance evaluation is received late the step increase will be retroactive to the pay period that includes the date eligible for the step increase.

Section 15. Overtime

All work performed in excess of forty hours in a workweek 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.

Employees performing compensable overtime work shall be paid time and one-half at the employee's straight-time hourly rate of pay.

Section 16. Healthcare

The City is, and shall remain, compliant with provision of the Affordable Care Act (ACA).

Section 17. Pay for Leave Credits

Effective the first full pay period after Association ratification and Council adoption of this successor MOU, the City shall pay qualified employees in this unit pay for leave credits for each hour worked as follows:

Employees who have completed 2,080 cumulative hours worked in this unit shall receive 4.0% of the employee's hourly base wage in each pay period.

Employees who have completed 8,320 cumulative hours worked in this unit shall receive an additional 2.0% of the employee's hourly base wage for a total of 6% in each pay period.

Effective the full pay period after Association ratification and Council adoption of this successor MOU, employees who have completed 12,400 cumulative hours shall receive an additional 2.0% of the employee's hourly base wage for a total of 8% in each pay period.

Section 18. AB 1522 – Sick Leave

Effective July 1, 2015, the City will comply with California Healthy Workplaces/Healthy Families Act of 2014 which requires employers to provide paid sick leave at a rate of one hour for every 30 hours worked. New employees are required to complete 30 shifts in order to begin accruing sick leave, and 90 days of employment to use accrued sick leave. There will be no cap to the hours an employee can accumulate. There is no cash value to sick leave hours upon separation from service.

Section 19. Retirement

Employees eligible for CalPERS shall pay the full employee share of 8%, 7%, or 6.25%, depending on the tier they qualify for based on CalPERS rules, on a pre-tax 414h basis as allowable by the IRS.

**IN WITNESS WHEREOF, the parties hereto have executed this
Memorandum of Understanding this ____ day of _____
_2019.**

BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION, INC.

FOR BPSEA

FOR CITY

**Debra Gee
President of BPSEA**

**John Dalrymple
CEA Rep, Consulting Services**

**Alan Shear
Assistant City Manager**

**Phillip Hannon
Member of BPSEA Part-Time Unit**

**Kim Imboden
HR Manager**

**Dania Torres Wong
Renee Sloan Holtzman Sakai**

APPROVED AS TO FORM BY City Attorney:

Benjamin Stock