

July 30, 2018 – June 28, 2019

# BUENA PARK POLICE ASSOCIATION



## MEMORANDUM OF UNDERSTANDING

No. 18-19

ADOPTED JUNE 26, 2018, RESOLUTION No. R13814

**MEMORANDUM OF UNDERSTANDING  
BUENA PARK POLICE ASSOCIATION**

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**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**THE CITY OF BUENA PARK, CALIFORNIA**  
**(Hereinafter called CITY)**  
**and**  
**THE BUENA PARK POLICE ASSOCIATION**  
**(Hereinafter called ASSOCIATION)**

**EMPLOYER – EMPLOYEE RELATIONS**

**PREAMBLE**

Pursuant to California law, representatives of the City and the Association (a duly recognized employee organization), have met and conferred in good faith and have reached an agreement and recommend that the Buena Park City Council adopt this Memorandum of Understanding (MOU).

**ARTICLE 1 – TERM**

The term of this Memorandum of Understanding shall be June 30, 2018 through midnight on June 28, 2019, unless otherwise specified in provisions hereinafter. Terms and conditions of employment already in effect on June 29, 2018, shall be considered minimums for the purpose of this agreement except as amended or repealed by specific provisions hereinafter.

**ARTICLE 2 – REPRESENTATION AND RECOGNITION**

The Association is the only employee organization entitled to meet-and-confer in good faith on matters within the scope of representation on behalf of employees in the Police Unit, which shall consist solely of the classifications listed in Exhibit A and B.

**ARTICLE 3 – MANAGEMENT RIGHTS**

Except as expressly abridged or modified herein, the City retains all rights, powers and authority with respect to the management and direction of the performance of City services and the work forces performing such services, provided that nothing herein shall change the City's obligation to meet-and-confer on all matters relating to employment conditions and employer-employee relations including, but not limited to, wages, hours, and terms and conditions of employment or be construed as granting the City the right to make unilateral changes on matters within the scope of representation. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law and executive order.

Neither the City nor the Association waives any rights under the law by agreeing to this clause and it is the intent of the parties that the scope of representation be defined by California statutory and case law.

#### **ARTICLE 4 – EXISTING CONDITIONS OF EMPLOYMENT**

Except as expressly provided herein, during the term of this Memorandum of Understanding there shall be no changes in existing benefits, and terms and conditions of employment which have been expressly provided in prior Memoranda of Understanding, and/or expressly provided in the various Ordinances and Resolutions of the City of Buena Park.

#### **ARTICLE 5 – MEET AND CONFER PROCESS**

The Association and City have met and fully discussed terms and conditions of employment. Under the Meyers-Millias-Brown Act, no additional items will be placed under discussion for purposes of meet-and-confer unless mutually agreed.

The parties shall cooperate to improve the format, clarity, and consistency of the Memorandum of Understanding.

#### **ARTICLE 6 – SAVINGS AND REOPENER**

In the event that any portion of this Memorandum of Understanding is found to be unlawful or unenforceable by a court of competent jurisdiction, such defect shall not affect the lawfulness of enforceability of any other portion.

In the event that any state or federal legislative, executive or judicial act purports to negate any economic wage or other term or condition of employment under this agreement, the parties agree to discuss whether the state or federal act should be challenged in a court of competent jurisdiction while the agreement remains unchanged, or in the alternative, whether the agreement should be reopened for the sole purpose of agreement upon an equivalent economic wage or other term or condition of employment which would be legally permissible under the terms of the state or federal act. A decision to leave the agreement unchanged and challenge the state or federal act must be made by the mutual agreement of the City and the Association.

<b>PAY</b>
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**ARTICLE 7 – ASSIGNMENT OF CLASSES TO PAY RANGES**

Each classification is assigned to a pay range as shown in Exhibit A and B.

**ARTICLE 8 – BASE PAY SCHEDULE**

- A. The schedule of base pay rates is contained in Exhibit A and B.
- B. Ratification Bonus. A one-time, single Ratification Bonus payment in the amount of \$3,000.00 shall be paid to all employees in the classifications in Exhibit A and B on payroll as of the effective date of this contract. Ratification Bonus payments will be subject to all applicable federal and state tax withholdings. Ratification Bonus payments will not be considered compensation reportable to CalPERS or included in the calculation of regular rate for overtime, benefits, or for any other purpose.

**ARTICLE 9 – BILINGUAL PAY**

An employee hired before October 13, 2012, shall receive an additional four percent of base pay if the following conditions are met:

- A. The employee passes a qualifying examination administered by the Human Resources Office.
- B. The employee must use bilingual skills as required by the City.

A miscellaneous employee hired on or after October 13, 2012, shall receive an additional \$70 per month. Police Dispatcher, Lead Police Dispatcher, and Police Dispatcher Supervisor Job Classifications shall receive an additional \$150 per month. A safety employee hired on or after October 13, 2012, shall receive an additional \$150 per month if the conditions listed above (A & B) are met.

**ARTICLE 10 – LONGEVITY PAY**

- A. The City Agrees to implement a longevity pay program to be administered in the following manner:
  - 1. Employees with 20-24 years of City service shall receive a three (3%) base salary adjustment on an annual basis.
  - 2. Employees with 25 years or more of City Service shall receive a five (5%) base salary adjustment on an annual basis.

B. Two-Tier Longevity Pay System. For employees hired after October 13, 2012, the following longevity pay program will be administered in the following manner:

1. Employees with 20 years but less than 25 years of current continuous City service shall receive an additional \$125 per month.
2. Employees with 25 years or more of current continuous City Service shall receive an additional \$175 per month.

**ARTICLE 11 – SPECIAL ASSIGNMENT PAY**

A. SPECIAL ASSIGNMENTS. A sworn employee assigned to the duties indicated shall receive the following additional amounts:

	<u>Monthly Rate</u>
• Motor Officer	\$250
• Detectives	\$150
• Professional Standards Sergeant	\$150
• Commercial Enforcement Officer	\$150
• Mounted Patrol	\$500

B. EXTRA DUTY DETAIL. Businesses and community agencies contract with the Police Department to provide police services such as security at special public and private events. The work performed is solely at the employee's option and the employer is separate and independent from the primary employer (the City). The extra duty detail rate is paid at Step 6 of the Police Officer classification at time and one-half.

**ARTICLE 12 – SHIFT DIFFERENTIAL PAY**

A A non-sworn employee who works on Watch #1 (2130 – 0730) or Watch #3 (1630-0230) shall receive additional monthly pay in accordance with this schedule:

<u>Time Worked</u>	<u>Pay</u>
• Full-Time	\$175.00
• Less than full-time but more than one day per pay period	\$ 87.50

B A sworn employee assigned to the patrol bureau and assigned full-time to the overnight shift Watch #1 (2130 – 0730) deployment shall receive an additional \$150 per month.

- C A Police Sergeant assigned to the patrol bureau and assigned full-time to the overnight shift Watch #1 (2130 – 0730) deployment shall receive an additional \$200 per month.

### **ARTICLE 13 – MATRON PAY**

A full-time Police Records Clerk assigned by the Chief of Police (or designee) to search female prisoners and assist in the booking process shall receive an additional \$150 per month.

### **ARTICLE 14 – OVERTIME PAY**

- A. OVERTIME. An employee required to work in excess of 40 hours in a seven day cycle shall receive pay at the rate of time and one-half his/her regular rate of pay. The regular rate of pay shall include the following components in addition to base pay:

- Shift Differential
- Educational Incentive
- Bilingual Pay
- Special Assignment Pay
- Longevity Pay
- Excess Medical
- Waiver of Medical Insurance

In determining an employee's eligibility for the overtime regular rate, paid and unpaid leaves of absences shall be excluded from the total hours worked. Paid leaves of absence include, but are not limited to, the following:

- Vacation
- Holiday Leave
- Sick Leave
- Administrative Leave
- Compensatory Leave
- Workers' Compensation Leave
- Jury Duty
- Bereavement Leave
- Military Leave

For overtime not otherwise paid at the regular rate, it shall be paid at time and one-half of the hourly equivalent of the employee's base pay rate for all hours worked in excess of the employee's daily work schedule, or for all hours earned in excess of 40 hours per week. The term "earned" shall include hours for vacation, holiday, sick leave and jury duty.

Notwithstanding the above, an employee assigned to patrol who must work overtime beyond the end of his/her regularly scheduled shift ("shift extension duty" due to such activities as dispatched calls, processing arrests, report writing, and jail transportation), shall be entitled to time and one-half overtime irrespective of paid leave time exclusions.

Notwithstanding the above, an employee called to Court on his/her off-duty hours shall be entitled to time and one-half overtime irrespective of paid leave time exclusions.

There shall be no pyramiding of overtime. Hours worked by an employee in any workday or workweek on which premium rates have once been allowed shall not be used again in any other overtime calculation other than computing total actual hours worked.

**B. COMPENSATORY TIME.**

1. **Fair Labor Standards Act (FLSA).** In lieu of receiving overtime pay pursuant to Paragraph A above, an employee may elect to receive compensatory time off on a time and one-half basis. The employee shall be allowed to "bank" compensatory time at a time and one-half basis. No employee shall accrue more than 100 hours of such compensatory time without the approval of the Chief of Police (this 100 hour maximum bank is in conjunction with Section 2 below). Should any employee exceed 100 hours of accrued compensatory time, he/she shall be paid at time and one-half his/her regular rate. One time annually (Fiscal Year) an employee may cash out up to 40 hours.

An employee may use such compensatory time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the department.

2. **Non Fair Labor Standards Act (Non-FLSA).** Overtime hours not otherwise subject to the FLSA regular rate of pay (after taking paid leave time exclusions into account) may be taken as compensatory time off. Such hours shall be earned, banked, and taken off at the straight time rate. No employee shall accrue more than 100 hours of such compensatory time. (This 100 hour maximum bank is in conjunction with Section 1 above.) Should any employee exceed 100 hours of accrued compensatory time, he/she shall be paid at time and one-half his/her base rate.

**C. AUTHORIZATION.**

1. All overtime requests must have the prior authorization of a supervisor prior to the commencement of such overtime work. Where prior written authorization is

not feasible, explicit verbal authorization must be obtained. Calls for service beyond the end of duty time are considered as authorized.

2. An employee's failure to obtain prior approval may result in the denial of the overtime request.
3. The City may prescribe reasonable periods of overtime work to meet its operational needs.

D. CLOTHES CHANGING. Employees are not authorized to wear their uniforms or any part thereof that is distinguishable as such unless on duty. Each employee is provided with a locker for his/her own personal convenience. An employee may or may not utilize the locker for storage and changing purposes at his/her own discretion.

Nothing herein prevents an employee from wearing his/her uniform to and/or from his/her residence to work.

Time spent in changing clothes before or after a shift, is not considered time worked and is not compensable in any manner whatsoever.

E. TRAINING TIME. Training time outside normally scheduled work hours shall be compensated pursuant to Code of Federal Regulations (CFR), Section 785.27, *et seq.*

Travel time outside normally scheduled work hours shall be compensated pursuant to CFR Section 785.33, *et seq.*

When feasible, the Department will adjust the employee's work schedule to minimize the impact of travel and training time.

F. CITY VEHICLE USE. An employee who is provided with a City vehicle (including motorcycles) to travel to and from work shall not be compensated in any manner whatsoever for such travel time in the City vehicle.

This provision also applies in those situations where the radio must be left on and monitored.

This provision does not preclude compensation in those situations in which an employee is required to perform emergency law enforcement duties during his/her travel to or from work as required by law. In such cases, appropriate compensation shall be provided.

G. CALL-BACK PAY. Call-back duty occurs when an employee is ordered to return to duty on a non-regularly scheduled work shift. Call-back does not occur when an employee is held over from his/her prior shift or is working prior to his/her regularly

scheduled shift. An employee called back to duty shall be credited with a minimum of two hours work commencing when he/she leaves his/her residence, except that if the call-back is to attend a City or Departmental meeting, travel time shall not be considered as time worked.

Any call-back lasting two hours or less shall result in a credit for two hours worked. When added to the 10 hour day or 40 hour work week an employee shall end up with a net result of three hours pay (or comp time) 3 hours at time and one-half). Any call-back lasting more than two hours shall result in a credit for actual hours worked. When this credit is added to the 10 hour day or 40 hour work week, the net result will be time and one-half the actual hours worked on the call-back.

Similar calculations as outlined above will be used when an employee is entitled to a four hour call out because the call-back occurs on Sunday, a holiday, or between 12:01 a.m. and 7:00 a.m.

The above provision shall not result in a double payment for call outs lasting less than two hours (or when applicable, four hours). For instance, if an employee works one hour on a call out, he/she shall be credited with two hours, resulting in three hours of pay or comp time after application of time and one-half. He/she shall not be entitled to the one hour at time and one-half plus the two hour minimum.

This provision is to be distinguished from Court Standby pay in Section 9, which is to be used when an employee is called back to court.

- H. COURT PAY. When an employee is physically called to court, while off duty, he/she shall be credited time and a half for the time actually spent in court. An employee shall be credited with a minimum of two hours for the court appearance. Travel time shall be not considered time worked and shall not be compensated in any manner whatsoever.

Notwithstanding the above, an employee who is required to travel outside the normal Orange County area may file a request for paid travel time with the Chief of Police or designee. Determination if the request is unusual travel outside the norm rests solely with the Chief or designee. Upon approval, the employee shall be paid travel time equivalent to the lesser of:

1. travel from the employee's home to court or,
2. travel from the police department to court.

Determination of what is the lesser travel time shall be made by the Chief or designee.

- I. COURT STANDBY. An employee may leave a telephone number where he/she may be reached while on court standby. Such time is not considered hours worked under the FLSA and will not be compensated except as set forth below.

The City shall compensate employees at the rate of two hours for any portion of the a.m. If the standby continues into the afternoon the City shall compensate employees at the rate of two hours for any portion of the p.m. standby duty.

An employee who receives a standby or appearance subpoena for an afternoon court session, which subpoena is cancelled on the date of the subpoena, shall be paid for one hour at his/her regular hourly rate in consideration of the late cancellation.

This payment is being made pursuant to the MOU, not pursuant to FLSA. Time compensated in the above manner shall not constitute hours worked for purposes of FLSA.

- J. CANINE ASSIGNMENT. Each canine handler shall be credited with 15 hours of compensatory time each month for the care, feeding, grooming, exercise, training and companionship of his/her assigned dog.
- K. TRAINING DUTY. An employee in the classification of Police Officer or Police Dispatcher who is required by the City to train another Police Officer or Police Dispatcher, respectively, and to write a daily performance evaluation of such training shall be credited with one hour of overtime pay for each day such duties are performed.
- L. FAIR LABOR STANDARDS ACT (FLSA) Exemptions. Although the following classifications are part of the Association, they are designated as exempt employees as defined by the Fair Labor Standards Act (FLSA):

Classification Title
CRIMES ANALYST

As a result, FLSA exempt personnel are not eligible to accrue compensatory time or be paid overtime. Each employee shall receive 40 hours of administrative leave per fiscal year. Administrative leave must be taken by June 30 each year and no part of it may be carried over into the next fiscal year.

Additional time may be granted by the employee's department head for time spent at required meetings and special events.

The definition of meetings and special events includes:

- City job-related emergencies.
- City Council meetings.
- City Commission or Committee meetings, or

- Any meeting or special event approved in advance by the department head or his/her designee.

## **ARTICLE 15 – EDUCATION PROGRAM**

### **A. REIMBURSEMENT.**

1. An employee who is pre-approved by the department head to attend a specified, off-duty education course shall receive reimbursement for certain expenses.

An approved education course is defined as off-duty instruction that will be mutually and immediately beneficial to the employee and the City.

2. Prior to enrolling in the class, an employee desiring reimbursement for expenses shall acquire the department head's approval as to course content and its relationship to the employee's City employment. On completion of the course, with a grade of "C" or better, the employee shall submit a Request for Educational Reimbursement form to the department head along with a copy of the official transcripts and receipts for total cost of the course.
3. On approval by Human Resources and Finance, the employee shall then be reimbursed up to a maximum of \$2,000 per fiscal year for tuition, transportation costs where appropriate, registration fees and related expenses necessary for completion of the course. The cost of books required for the course shall be reimbursed at actual cost; this reimbursement is not part of the \$2,000 maximum described above.
4. Reimbursement will be made only for coursework taken within the current fiscal year (July 1 – June 30). The difference between the City's maximum obligation during any fiscal year and the total amount of actual reimbursement received by the employee during that fiscal year shall not be carried over or be available for use by the employee in any subsequent year.
5. A copy of the official transcript shall be forwarded to the Human Resources Office for retention in the employee's education file.

### **B. EDUCATIONAL INCENTIVE ALLOWANCE.**

1. Sworn employees hired before October 13, 2012, shall receive an additional allowance as follows:
  - P.O.S.T. Intermediate Certificate and/or A.S. or A.A. degree 2.5% of base pay
  - P.O.S.T. Advanced Certificate, and/or B.S. or B.A. degree 5.0% of base pay

- M.A., M.S. or J.D. degree 7.5% of base pay

No employee may receive more than one educational incentive benefit at one time.

2. Sworn employees hired on or after October 13, 2012, shall receive an additional allowance as follows:

- P.O.S.T. Intermediate Certificate and/or A.S. or A.A. degree \$100 per month
- P.O.S.T. Advanced Certificate, and/or B.S. or B.A. degree \$200 per month
- M.A., M.S. or J.D. degree \$300 per month

No employee may receive more than one educational incentive benefit at one time.

3. A Non-Sworn employee with a job-related (as determined by the City) degree or P.O.S.T. certificate from an accredited educational institution shall receive an additional allowance as follows:

- P.O.S.T. Intermediate Certificate and/or A.S. or A.A. degree \$60 per month
- P.O.S.T. Advanced Certificate, and/or B.S. or B.A. degree \$90 per month
- Master's or Ph.D. degree \$120 per month

No employee may receive more than one educational incentive benefit at one time.

#### **ARTICLE 16 – CLOTHING ALLOWANCE**

- A. Sworn personnel shall receive an \$800 annual allowance for the replacement and maintenance of uniforms.
- B. Sworn personnel assigned to the Special Weapons and Tactical Unit (SWAT) shall receive an additional \$150 annual allowance for the replacement and maintenance of uniforms.
- C. Officers assigned to motorcycle enforcement shall receive two pairs of motorcycle britches each July.
- D. Newly-hired sworn personnel shall receive all necessary safety equipment including the following:

- Department approved firearm
- All leather or nylon gear
- Baton
- Two complete sets of uniforms
- Chemical mace
- Bullet-proof vest
- Duty jacket
- Rain suit
- Rain boots
- Uniform cap
- Handcuffs
- Helmet

E. An employee in a classification listed below shall receive a \$500 annual allowance for the replacement and maintenance of uniforms.

- Clerical employees
- Police Dispatchers
- Parking Enforcement Specialists
- Police Service Officers
- Forensic Specialist
- Crime Analyst
- Property Technician

F. Newly hired non-sworn employees shall receive the necessary uniforms upon initial hire. They then shall receive an annual allowance as described above for replacement and maintenance of uniforms.

G. Any part or portion of a uniform rendered unacceptable by any act of employment shall be replaced at City expense. Age of uniform and general wear and tear will be considered in the determination of the amount of reimbursement.

H. Upon separation, all employees shall return to the City any usable items that were obtained from City funds.

#### **ARTICLE 17 – VEHICLE USE**

A. An employee required to use a personal vehicle for City business shall be reimbursed at the rate allowed by the Internal Revenue Service or the amount reimbursed under fully reimbursed Police Officers Standards and Training (P.O.S.T.) activities, whichever is greater.

B. The Chief of Police may assign three Detectives to use a City vehicle to commute to and from work and may be used for personal reasons within a 10 mile radius of residence or work or for personal emergencies if no personal vehicle is available. The rules governing use of such vehicles shall be established by the City. The employees assigned to said vehicles shall report to work when required by the City.

C. The parties shall meet-and-confer on the rules governing the use of City Vehicles for personal use within a ten mile radius.

**RETIREMENT**

**ARTICLE 18 – PUBLIC EMPLOYEES RETIREMENT SYSTEM**

A. RETIREMENT PLAN. The City shall maintain its contract for a pension plan with the California Public Employees Retirement System (CalPERS), as originally adopted on March 1, 1964, and amended thereafter.

B. CONTRACT OPTIONS. The City’s contract with CalPERS shall include the following options:

	<u>Government Code Section</u>	<u>Safety</u>	<u>Miscellaneous</u>
1. One Year Highest Compensation	20042	✓	✓
2. Military Service Credit as Public Service	21024	✓	✓
3a. 2.5% at 55 – Full Formula	21354.4		✓ (1)
3b. 2.5% at 55 – Modified Formula	21354.4		✓ (2)
4. 3% at 50 – Full Formula	21362.2	✓	
5. Fourth Level of 1959 Survivor Benefit	21574	✓	✓
6. Post Retirement Survivor Allowance	21624 and 21626	✓	
7. Pre-Retirement Optional Settlement 2 Death Benefit	21548	✓	✓

(1) Employees hired after March 31, 1972

(2) Employees hired on or before March 31, 1972

C. SECOND TIER CONTRACT OPTIONS. The City’s contract with CalPERS for employees hired on or after December 22, 2012, shall include the following options:

	<u>Government Code Section</u>	<u>Safety</u>	<u>Miscellaneous</u>
1. Three Highest Years	20037	✓	✓

Compensation

2.	Military Service Credit as Public Service	21024	✓	✓
3.	2% at 60 – Full Formula	21353		✓
4.	2% at 50 – Full Formula	21362	✓	
5.	Fourth Level of 1959 Survivor Benefit	21574	✓	✓
6.	Post Retirement Survivor Allowance	21624 and 21626	✓	
7.	Pre-Retirement Optional Settlement 2 Death Benefit	21548	✓	✓

D. THIRD TIER CONTRACT OPTIONS. The City's contract with CalPERS for employees hired on or after January 1, 2013, shall include the following options:

		<u>Government Code Section</u>	<u>Safety</u>	<u>Miscellaneous</u>
3.	Three Highest Years Compensation	7522.32	✓	✓
4.	Military Service Credit as Public Service	21024	✓	✓
3.	2% at 62 – Full Formula	7522.20		✓
4.	2.7% at 57 – Full Formula	7522.25	✓	
5.	Fourth Level of 1959 Survivor Benefit	21574	✓	✓
6.	Post Retirement Survivor Allowance	21624 and 21626	✓	
7.	Pre-Retirement Optional Settlement 2 Death Benefit	21548	✓	✓

**E. CONTRIBUTIONS – SAFETY EMPLOYEES.**

1. Employees shall pay the full nine percent (9%) member contribution via payroll deduction on a pre-tax basis.
2. Employees hired on or after January 1, 2013, shall pay 50% of the normal cost rate for the benefit formula 2.7% at Age 57 via payroll deduction on a pre-tax basis (Government Code Section 7522.30).
3. 1959 Survivor. Each employee shall pay the employee share required by CalPERS (currently \$2.00 per month) and the City will pay the employer cost.

**F. CONTRIBUTIONS – MISCELLANEOUS EMPLOYEES.**

1. Employees hired before December 22, 2012, the full eight percent (8%) cost of the CalPERS member contributions shall be paid by each miscellaneous employee via payroll deduction on a pre-tax basis.
2. Employees hired on or after December 22, 2012, the full seven percent (7%) cost of the CalPERS member contributions shall be paid by each miscellaneous employee via payroll deduction on a pre-tax basis.
3. Employees hired on or after January 1, 2013, shall pay 50% of the normal cost rate for the benefit formula 2% at Age 62 via payroll deduction on a pre-tax basis (Government Code Section 7522.30).
4. 1959 Survivor Benefit. Each employee will pay the employee share required by CalPERS (currently \$2.00 per month) and the City will pay the employer costs.

**ARTICLE 19 – SOCIAL SECURITY**

In the event the City and its employees are required to participate in the Federal Social Security program, the contribution designated by law to be the responsibility of the employee, and shall be paid in full by the employee. The City shall not be obligated to pay or "pick-up" any portion thereof.

## INSURANCE

### ARTICLE 20 – MEDICARE

Employees hired by the City on or after April 1, 1986, shall pay the designated employee contribution to participate in the Medicare Program and the City shall be under no obligation to pay or “pick-up” any such contributions.

### ARTICLE 21 – MEDICAL INSURANCE

A. The City shall provide group medical insurance under the California Public Employees' Medical and Hospital Care Act (PEMHCA).

B. City Contribution. The City shall contribute the following monthly amounts for group medical insurance. Any additional contribution necessary to maintain group medical insurance shall be borne solely by the employee.

#### 1. Persons Hired On or Before June 30, 1999.

##### **Employees**

*For coverage effective July 1, 2018*

- Employee Only \$ 973.00
- Employee & 1 Dependent \$1,320.00
- Employee & 2 + Dependents \$1,569.00

##### **Retirees**

- Retiree Only \$200.00
- Retiree & 1 Dependent \$310.00
- Retiree & 2 + Dependents \$420.00

#### 2. Persons Hired On or After July 1, 1999.

##### **Employees**

*For coverage effective July 1, 2018*

- Employee Only \$ 973.00
- Employee & 1 Dependent \$1,320.00
- Employee & 2 + Dependents \$1,569.00

## Retirees

The City's contribution for retirees who were hired on or after July 1, 1999, is determined by the California Public Employees Retirement System (CalPERS) in accordance with Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA). The contribution amounts are subject to change each calendar year based on changes to the medical care component of the Consumer Price Index.

- *For coverage effective January 1, 2018: \$133.00/month per retiree*
- *For coverage effective January 1, 2019: \$136.00/month per retiree*

C. EXCESS MEDICAL. An employee who selects a health insurance plan which costs less than the City's maximum monthly contribution may have the difference placed in his/her deferred compensation account, purchase products available through the City's Cafeteria plan, or receive a cash payout. For example, an employee with two or more dependents is entitled to a maximum monthly contribution of \$1,569.00. If he/she has a health insurance plan which costs \$1,188.64 per month, the employee is entitled to \$380.36 per month in excess medical.

## D. WAIVER OF MEDICAL INSURANCE.

1. An employee may elect to not be covered by a City group medical insurance plan if he/she provides proof of coverage from another group medical insurance source. The City may require proof of coverage at any time.
2. An eligible employee may elect to have the City's monthly contribution applied to his/her deferred compensation account, the purchase of products offered through the Cafeteria Plan, and/or receive a cash payout.

The City Contributions shall be:

- For coverage effective July 1, 2018. \$923.00 per month

E. SERVICE RETIREMENT ACCOUNT (SRA). In addition to the Contribution pursuant to the CalPERS contract, employees hired on or after July 1, 1999, will be allowed to bank accrued sick leave time for use upon Retirement from Service, into a Service Retirement Account to defer out-of-pocket expenses for purchasing group medical insurance under the City's program. The City will participate in the SRA by matching the employee contribution on a two-for-one basis.

1. SRAs are not subject to fellow employee donations of sick leave or any other leave provisions. However, the SRA will be coordinated with the City's Sick Leave Buyback program.

2. To be eligible, an employee must have a sick leave balance of at least of 480 hours, and must maintain at least 480 hours of sick leave after making such deposit.
3. An eligible employee may place up to one-half of any unused portion of his/her annual sick leave accrual into the SRA, with the City matching contribution of two-to-one. This provision will be coordinated with the sick leave buyback provision, thereby limiting buyback and SRA deposits to one-half of any unused portion of their annual sick leave accrual.
4. The SRA is not subject to bearing interest. Eligible employee deposits and the City's matching contributions are flat deposits.
5. Sick leave placed in the SRA will be converted into cash at the employee's base pay rate and thus will no longer be available as sick leave once deposited in the SRA.
6. The donor employee shall have two options for withdrawal of funds:
  - a. At the option of the employee, upon retirement from service, the SRA will be paid at the then hourly rate for the depositor. This shall include the employee contribution as well as the City's matching portion, which will be used to offset/defer costs associated with purchasing group medical insurance plans during retirement.
  - b. The employee may, at any time, withdraw hours from the SRA to convert to cash, and will be paid at the base pay rate in effect when the original deposit was made. An employee making an early withdrawal from the SRA, shall not be entitled to any of the City's matching contribution, and shall lose that equal portion of the matching contribution as was withdrawn, i.e., two-to-one.
7. In the event that a participating employee separates from employment on other than a Retirement from Service (Service Retirement or Disability Retirement), the City shall payoff only the employee's portion of the contributions made to the SRA, at the base pay rate for each deposit and shall not be entitled to any of the City's matching contribution;
8. In the event the SRA survives an active employee, or a retired employee, the City will pay off the balance of the employee's contribution to the survivor of record. Payment will be at the then-current base pay rate for the active employee and/or at the base pay rate of withdrawal for retired employee, including the City's matching contribution.
9. The City reserves and retains the right to hear and make determinations regarding any disputes caused by this provision of the MOU. Determinations shall be made in a manner that no employee shall lose his/her portion of the SRA

and the City will not lose its portion of the matching contribution. Any determinations made in hearing a dispute to grant the City's portion of the matching contribution will be made on a case-by-case basis, and will not be determined to be a past practice or official policy of the City.

Any person employed by the City prior to July 1, 1999 who is not currently a member of this unit of representation shall enjoy all benefits and rights of those employees hired prior to July 1, 1999, upon later occupying a position within this unit of representation.

10. Effective July 21, 2012, all employees not currently enrolled in the SRA program are not eligible to enroll in this program. This program is closed to new enrollees.

F. RETIREE MEDICAL ACCOUNT (RMA). An employee may bank accrued sick leave upon Retirement (Service or Disability Retirement) from City service into a RMA to defer out of pocket expenses for medical premium payments under the City's group insurance program.

An employee who wishes to participate in the RMA program must file in writing with the Human Resources Office a request to participate at least 60 days prior to his/her anticipated retirement date. Exceptions to the notice requirement will be made for industrial disability retirements.

1. RMAs may be established on an individual basis only; and are an irrevocable determination;
2. RMAs are not subject to fellow employee donations of sick leave or other leave provisions. However, the RMA will be coordinated with the City's Sick Leave Pay on Separation provision. (See Article 31);
3. To qualify for conversion of unused sick leave into a RMA, an employee must separate from City service with a valid CalPERS retirement (Service Retirement or Disability Retirement);
4. An employee terminated for cause or who resigns from City service not associated with a CalPERS service or disability retirement does not qualify;
5. An employee must have a minimum of 480 hours of sick time on the books at the time of retirement;
6. For the purpose of determining eligibility for participation in the RMA program, the number of unused accrued sick leave hours will be calculated in the following manner:
  - a. Employees hired prior to September 20, 1982:

- 1) Payment under the Sick Leave Pay on Separation provision will be calculated first. Under this provision, employees are eligible for payment of their unused sick leave up to a maximum of 480 hours, based on years of service, and must separate from the City on a service or disability retirement.
  - 2) The hours being paid will be deducted from the employee's unused sick leave up to the maximum of 480 hours.
  - 3) After payment of sick leave under the Sick Leave Pay on Separation provision, the remaining balance of unused sick leave must be 480 hours or more to qualify for participation in the RMA program. Sick leave balances of 480 hours or more will then be converted based on paragraph #8, below.
- b. Employees hired between September 20, 1982 and July 1, 1999:
- Employees in this category must have a minimum of 480 hours of unused sick leave on the books at the time of retirement.
- c. Employees hired after July 1, 1999:
- Employees in this category must have accumulated a minimum of 480 hours of sick leave, and have participated in the SRA program for a minimum of five years.
7. The City will convert sick leave balances over 480 hours to a RMA at the employee's base pay rate at retirement. These monies can be used for medical-only premium amounts not covered by the City's existing contribution to the retirement medical program.
  8. The balance of sick leave hours will be converted on the following basis:

480 - 1000 hours	-	60% of the value of all unused sick leave based on the employee's base pay rate* at the time of retirement.
1001 - 1500 hours	-	80% of the value of all unused sick leave based on the employee's base pay rate* at the time of retirement.
1501 and above	-	100% of the value of all unused sick leave based on the employee's base pay rate* at the time of retirement.

\*Base pay rate is defined as the amount listed in Exhibits A and B.

9. The RMA is not subject to bearing interest. No lump sum cash payouts will be offered on the remaining balance of unused sick leave.
10. The amount of unused sick leave placed into the RMA will be converted into cash at the employee's base pay rate at the time of retirement, and used to offset/defer costs associated with medical premium rates;
11. In the event the RMA has funds remaining at the time a retired employee dies, the spouse will continue to receive the benefit, in accordance with and under the terms of this program, until his/her death or until no funds remain.
12. The City reserves and retains the right to hear and make determinations regarding any disputes caused by this provision of the MOU. Any determinations made in hearing a dispute will be made on a case by case basis, and will not be determined to be a past practice or official policy of the City.

#### **ARTICLE 24 – DENTAL INSURANCE (Effective 1/1/19)**

The City shall continue to provide the current dental program for both employees and their eligible dependents under the age of 26.

Each employee is responsible for choosing one of the three plans listed below. In the event that no choice is made, the employee will be deemed to have chosen no dental insurance coverage.

Employees may switch plans only during the open enrollment period designated by the City.

**Payment of Premiums.** Employees shall pay the amounts shown below. Any additional amount necessary to maintain group dental insurance shall be paid by the City.

- A. **50/50 PLAN.** The insurance carrier pays 50% of major expenses (up to a maximum of \$2,000 per calendar year) and the employee pays 50%.

	<u>Monthly</u>
• Employee Only	\$3.00
• Employee & 1 Dependent	\$5.00
• Employee & 2 + Dependents	\$7.50

**80/20 PLAN.** The insurance carrier pays 80% of major expenses (up to a maximum of \$2,000 per calendar year) and the employee pays 20%.

	<u>Monthly</u>
• Employee Only	\$10.00
• Employee & 1 Dependent	\$15.00
• Employee & 2 + Dependents	\$20.00

B. **HMO PLAN.** The insurance carrier pays a portion of all services based on the fee schedule. Employees who enroll in this plan do not pay any monthly premium. Each employee is responsible for any co-payment associated with this plan.

### **ARTICLE 25 – LONG TERM DISABILITY INSURANCE**

- A. The City shall pay the entire premium for a City-owned long-term disability insurance policy affording coverage to each active non-sworn employee.
- B. The policy shall have a benefit waiting period of 60 calendar days of continuous disability. Anytime after the expiration of the benefit waiting period, the employee may apply for this insurance and may use accrued leave pursuant to the City's policy thereon.
- C. The maximum benefit for total disability shall be  $66 \frac{2}{3}$  of the eligible employee's basic monthly earnings as defined in the policy document, or \$2,500 per month, whichever is less.

### **ARTICLE 26 – LIFE INSURANCE**

The City will provide group term life insurance (including accidental death and dismemberment) for each employee (either full-time or part-time) in the amount of \$7,500 for sworn classifications and \$15,000 for non-sworn classifications. Each employee, at his/her own expense, may purchase additional life insurance from the insurer through the City.

### **ARTICLE 27 – CAFETERIA PLAN**

- A. The City shall provide a full flexible Cafeteria Plan under IRS Code Section 125, to include Premium Only Conversion, Health Care Spending and Dependent Care Accounts.
- B. The City and individual participants shall divide the cost of the third party administration service fee. Service fees are to be paid only by employees enrolled in the Health Care Spending Account and/or Dependent Care Spending Account. There is no service fee for participants in the Premium Only Conversion plan. The

service fee may be changed from time to time by the City and the third-party administrator. The City will meet and inform the Association as to service fee increases prior to increasing any deduction from employees, for any plan year.

- C. The City will utilize any assets remaining in the plan at the end of each plan year to off-set monthly service fees for employees enrolled in either the Health Care Spending Account and/or Dependent Care Spending Account. "Plan Year" is as defined in the plan documents. This item is governed by the Cafeteria Plan documents as it relates to "Plan Year". Asset utilization to off-set service fees shall be determined no later than June 30 of any subsequent year.

#### **ARTICLE 28 – ADMINISTRATION**

- A. The City shall have the right to select any insurance carrier or other method of providing coverage to fund the benefits included under the terms of this MOU, provided that the benefits of the employees shall be substantially the same prior to implementation of this MOU.
- B. If, during the term of this MOU, any change of insurance carrier or method of funding for any benefit provided hereunder occurs, the City shall meet with the Association prior to any change of insurance carrier or method of funding the coverage.
- C. All group insurance benefits shall be provided and calculated in accordance with the City's contracts with insurance providers.

**LEAVES**

**ARTICLE 29 – HOLIDAYS**

A. The following dates, and such other day or portions of days as may be designated by motion of the City Council, shall be observed as paid holidays of 10 hours each by all employees in permanent positions, except sworn personnel shall receive an extra day of vacation or equivalent pay, whichever in the judgment of the department head best serves the interests of the Department. All unused holiday leave banked must be used by the end of the fiscal year or will be forfeited.

<u>Holiday</u>	<u>Date</u>
New Year's Day	January 1
Martin Luther King Jr. Day	3 <sup>rd</sup> Monday in January
Washington's Birthday	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Veterans' Day	November 11
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Day after Thanksgiving	Friday following 4 <sup>th</sup> Thursday in November
Day before Christmas	December 24
Christmas Day	December 25

B. In addition, with the exception of Police Recruits, all non-sworn employees shall earn one floating holiday per fiscal year. This floating holiday shall be designated by the employee and requires management approval, in advance, before it is taken. New hires must be employed for three months before gaining eligibility for the floating holiday.

C. When a holiday occurs on a Saturday, the preceding Friday will be observed instead. When a holiday occurs on a Sunday, the following Monday will be observed.

D. For personnel working on shift assignments, the holiday will be observed on the actual date listed as the designated holiday.

**ARTICLE 30 – VACATION**

A. ACCRUAL.

Vacation leave with pay shall accrue to each full-time regular and probationary employee at the following rate:

<u>Years of Service</u>	<u>Vacation Hours Per Year</u>
Less than 5 years	100 hrs. per year (8-1/3 hrs. per month)
5 years to 10 years	120 hrs. per year (10 hrs. per month)
10 years to 15 years	160 hrs. per year (13-1/3 hrs. per month)
15 years or more	200 hrs. per year (16-2/3 hrs. per month)

B. ACCUMULATION. Accumulation of vacation leave in excess of twice the employee's annual accrual rate is prohibited. All vacation leave exceeding the maximum authorized accumulation shall be forfeited, provided that if an employee has made reasonable efforts to utilize vacation leave prior to the end of the preceding year, but has been denied those opportunities the excess vacation leave shall not be forfeited and the employee shall be afforded a reasonable opportunity to use that leave as soon as practicable. Those employees with 15 years or more shall not exceed a maximum of 400 hours.

C. USAGE. Vacation leave shall not be in excess of that actually earned at the time the vacation starts.

1. Each employee must take an annual vacation of at least one week (40 hours). The department head under appropriate circumstances may modify this requirement under appropriate circumstances.
2. The time during the calendar year at which an employee shall take vacation shall be determined with particular regard for the needs of the City and due regard for the wishes of the employee.
3. In the event one or more municipal holidays falls within a vacation leave, such days shall not be charged as vacation leave, and the vacation leave shall be extended accordingly for those employees eligible for such holidays.
4. Any leave of absence without pay shall not accrue vacation leave for each 30 day period of such leave.
5. No employee shall be entitled to any vacation until completion of 12 months of continuous service. However, under emergency conditions, the Chief of Police may permit an employee to use earned vacation prior to the end of the 12-month period.
6. All usage of vacation and compensation time should be requested and approved by the employee's department head or designee at least two days prior to the start of vacation time.

D. ANNUAL CONVERSION. Once each fiscal year, an employee may convert up to 40 hours of vacation leave into a cash payment at the employee's then-current rate of base pay. To be eligible for this option, the employee must utilize 40 hours of vacation leave in the preceding fiscal year.

E. VACATION PAY AT SEPARATION.

1. Upon separation, an employee who has completed his/her initial probation period with the City will receive compensation at the employee's current rate of base pay for all unused earned vacation, up to and including the date of separation.
2. A probationary employee who has not completed 12 months of continuous service shall not receive vacation pay at separation for regular vacation.
3. An employee who separates while serving a probation period in a classification to which the employee has been promoted shall receive separation vacation pay based on the hourly equivalent of the base pay received immediately prior to promotion, provided the employee has successfully completed the probation period in the classification from which the employee was promoted.

### **ARTICLE 31 – SICK LEAVE**

A. ACCRUAL.

1. Full-Time probationary, regular, appointee, and extended provisional appointees. A regular employee, or an employee having a full-time probationary appointments or extended provisional appointment, shall accrue sick leave with pay at the rate of eight hours for each full calendar month of continuous service in which the employee has worked or has been on authorized leave of absence with pay.
2. Any leave of absence without pay exceeding 15 consecutive days shall result in no accrual of sick leave during the consecutive days of the employee's leave of absence without pay that is in excess of 15 consecutive days.

B. ACCUMULATION. Sick leave may be accumulated without limit.

C. USAGE.

1. Sick leave may be taken only when the employee has sick leave credits. An employee shall be eligible to take sick leave after he/she has worked one full calendar month.
2. Sick leave may be granted only with the approval of the department head and only in the case of a bona fide illness or medical/dental appointments of the employee. The Department Head may require a physician's certificate or other

evidence of the adequacy of the reason for the employee's absence during the period for which sick leave was requested.

3. Sick leave may also be used for bona fide illness or medical/dental appointments of a family member (spouse, child, brother, sister, mother, father, mother-in-law, father-in-law, grandmother, grandfather) when the presence of the employee is required, up to a maximum of three days per individual situation. The department head may require a physician's certificate or other evidence of the adequacy of the reason for the employee's absence during the period for which sick leave was requested.
4. Maternity leave of absence. The employee shall submit a doctor's statement approving her fitness to continue working for a specified term. A post-natal release from the doctor must be submitted prior to returning to work.
5. Sick leave shall not be used in lieu of, or added to, vacation. Accrued vacation leave may be used for sickness when all sick leave has been taken.
6. Sick Leave during vacation. An employee who becomes ill while on vacation may have such period of illness charged to accumulated sick leave instead of to vacation, provided that immediately upon return to duty, the employee submits to the department head a written request for sick leave and a written statement signed by the employee's physician describing the nature and dates of the illness.
7. Limitations. No employee shall be entitled to accrue or to take sick leave with pay while absent from duty for any of the following reasons:
  - a. Disability or illness arising from compensated employment other than with the City of Buena Park.
  - b. Leave of absence without pay.
  - c. Absence because of intoxication or for the purpose of recovering from intoxication.

D. MEDICAL LEAVE OF ABSENCE. On written request of the employee and recommendation by the department head, the City Manager may authorize in writing a leave of absence without pay for the purpose of recovering from an illness, provided:

1. The employee has used all accumulated sick leave.
2. The employee has been continuously employed in the City service for at least one year.

3. The employee presents to the department head for referral to and consideration by the City Manager a written explanation of the employee's illness and an estimate of the time needed for recovery signed by the employee's physician.
4. Prior to resuming work, the employee may be required to take a medical examination at the employee's expense and as prescribed by the City Manager. The employment record and the results of such examination shall be considered by the City Manager or designee in determining the employee's fitness to return to work.
5. The maximum period of such leave shall be three calendar months. If the employee desires an extension, the employee shall follow the procedure described in subparagraph 3 above. This must be done prior to the end of the initial leave.

E. PENALTY FOR ABUSE. When, in the judgment of the department head, the employee's reason for being absent because of alleged sickness is inadequate, the department head shall indicate on the payroll form that the absence was without pay. The department head may recommend to the City Manager that disciplinary action be imposed against the employee.

F. ANNUAL BUYBACK.

1. To be eligible, an employee must have:
  - a. 480 hours of accumulated sick leave on the books as of the first pay period of July of the preceding year, and
  - b. 480 hours of accumulated sick leave on the books after the cash out.
2. An employee who wishes to participate must file in writing with the department head within 30 days of the end of fiscal year on June 30. This request will apply for the previous fiscal year sick leave accumulation.
3. Participants will be paid for 50% of the hours accrued during the fiscal year. These hours being paid will be deducted from the employee's sick leave bank. The other one-half of hours accrued, but not used, will remain in the employee's sick leave bank. Payment will be at the employee's base hourly rate in effect at the time of payment.

G. SICK LEAVE PAY ON SEPARATION. Except as herein provided, no payment shall be granted to an employee for accrued sick leave at the time of separation. Termination of an employee's continuous service, except by reason of layoff for lack of work or funds, shall abrogate all sick leave accrued at the time of such separation, regardless of whether the employee subsequently reenters the City service.

An employee hired on or prior to September 19, 1982, shall be paid for 50% of the value of his/her unused sick leave based on the employee's rate of base pay at the time of honorable separation or retirement.

An employee appointed on or after September 20, 1982, shall not be eligible for sick leave pay on separation as provided for in this section.

An employee may only accrue 120 days (960 hours) of sick leave for the purposes of this section and for the purposes of compensation on separation.

### **ARTICLE 32 – BEREAVEMENT LEAVE**

Whenever an employee who is eligible to receive sick leave is compelled to be absent from duty by reason of the death (or critical illness where death appears imminent) of a family member, the employee shall, upon approval of the department head, be entitled to charge such absence to the employee's accumulated sick leave to a maximum of five working days for each such incident. Use of such leave shall not count against the sick leave buy back or deposits made to the SRA.

*"Family member"* is defined as the employee's or spouse's:

- Father
- Grandfather
- Sibling(s)
- Spouse
- Mother
- Grandmother
- Child
- Grandchildren

### **ARTICLE 33 – WORKERS COMPENSATION**

A. Sworn employees shall receive industrial accident leave according to the provisions of Section 4850 of the California Labor Code.

B. Non-Sworn Employees Pay Continuation.

1. An employee who is absent from duty because of an on-the-job injury sustained during City employment shall receive his/her normal pay during the first 27 calendar weeks of such accident, provided the employee returns to the City any compensation paid under the provisions of the California Workers' Compensation Law for the corresponding period of time.

During this maximum 27 week period, an employee so entitled shall continue to receive all forms of compensation he/she would be receiving as if at work. The employee shall also be eligible for consideration for merit pay increases during this period.

2. After this maximum 27 week period, an employee who has not returned to work shall not receive any other form of compensation from the City, including but not

limited to accrual of vacation and sick leave, holiday pay, special assignment pay, education pay or payment of group insurance premiums. An employee may not use accumulated sick leave or vacation to supplement temporary disability indemnity payments.

### **ARTICLE 34 – JURY DUTY**

No deduction shall be made in the pay of an employee who serves on jury duty if the employee has waived or remitted to the City the fee for such jury duty. An employee who serves on jury duty on a scheduled day off shall not be required to remit his/her jury fees for that day. If the employee has not so waived or remitted the jury fee, the employee shall be paid only for the time actually worked in the City position. An employee summoned to jury duty shall immediately notify his/her supervisor in writing. The employee shall remit to the City all fees and allowances payable for jury duty, less reimbursements from the court for meals, travel, or lodging.

An employee who is scheduled to work the swing or graveyard shift and is called to jury duty shall be given time off on his/her scheduled shift if he/she is required to serve on jury duty that day. An employee shall be given time off for the number of hours actually served on jury duty.

### **ARTICLE 35 – OTHER LEAVES**

- A. Leave without pay. Upon the written recommendation of the department head, the City Manager may authorize special leaves of absence without pay for a period not to exceed 30 calendar days in a calendar year. This provision is available only to employees who are eligible to receive vacation leave.
- B. Authorized leaves of absence without pay of 30 calendar days or less, and leaves of absence with pay for any period shall not constitute an interruption of an employee's continuous service and shall not constitute an interruption of an employee's continuous service and shall not be deducted in computing total City service. Authorized leaves of absence without pay in excess of 30 calendar days, unless covered by the Family Medical Leave Act, shall be deducted in computing an employee's total City service for advancement in salary range and for other purposes specified in this MOU, but shall not serve to interrupt continuous service.
- C. MILITARY LEAVE. An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code. An employee requesting such military leave shall present a copy of the military orders to the department head prior to the beginning of the leave.

Employees who present military orders for active duty status shall continue to receive all forms of compensation he/she would be receiving as if at work for the first 30 days of such absence in any one fiscal year (except weekend drills and/or

training). Weekend drills and/or training are not considered active duty under the Military and Veterans Code and not eligible for salary continuation benefits.

If an employee is called to inactive duty and must report to such duty on days the employee is scheduled to work, the employee must request the time off and use their leave banks for such absence if necessary.

## **WORKING CONDITIONS**

### **ARTICLE 36 – PAY PERIODS**

- A. The City shall utilize the biweekly payroll system. Pay periods shall begin at 12:01 a.m. every other Saturday and end at midnight the second Friday (i.e., 14 calendar days later) thereafter. Paydays shall occur on the Friday following the conclusion of each pay period. The one exception is when that Friday is a Federal holiday, the payday shall fall on the preceding business day.
- B. Direct Deposit. The City shall electronically deposit employees' paychecks into a savings or checking account designated by the employee. All employees shall participate in the City's direct deposit payroll program. Each employee shall be responsible for providing the Human Resources Department with the correct routing number and account number of his or her banking institution.

### **ARTICLE 37 – ATTENDANCE**

- A. Each employee shall be in attendance at his/her work station in accordance with the rules regarding hours of work, holidays, and leaves. All departments shall keep daily attendance records of employees, which shall be reported to Payroll on a designated form and on the dates specified. Absence without leave, whether voluntary or involuntary, for a period longer than five consecutive assigned working days, or four consecutive working shifts for personnel on the 4-10 or three consecutive working shifts personnel on the 3-12 plan is an automatic resignation from City service.
- B. An employee who is absent from duty shall report the reason for such absence to the department head or immediate supervisor prior to the date of expected absence whenever possible, and in no case later than two hours after the beginning of the employee's normal work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay shall be made for the duration of any absence without leave. Upon return to work, such absence must be justified.

### **ARTICLE 38 – HOURS OF WORK AND SCHEDULES**

- A. WORK WEEK. The work week for all full-time positions shall be 40 hours.
- B. WORK SCHEDULE. The work schedule for each position shall be as established by the department head. All offices of the City, except those for which special regulations are required, shall be kept open for business on all days of the year except Saturdays, Sundays and holidays continuously on weekdays in accordance with the Alternative Work Schedule.

- C. The decision to implement any alternative work schedule is at the sole discretion of the City. An alternative work schedule may be revoked at any time by the City as long as 30 days notice of revocation is given to the Association and employees. Any modified work schedule shall not be considered a vested right or benefit, and the City has no obligation to meet-and-confer. However, the City agrees to meet with the Association prior to such revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

### **ARTICLE 39 – 4/10 PLAN**

- A. Federal legislation in Air Quality Management District (AQMD) Rule 15 requires employers, including cities, to use alternative methods to reduce vehicular pollution emissions. The alternative work schedule will reduce the average number of vehicle trips to the work site between 6:00 a.m. and 10:00 a.m., and comply with the Federal requirements. It also satisfies Council's direction to provide extended service hours to the public and employees.
- B. Plan Defined. Under this work schedule, employees work four consecutive, 10 hour days in a seven day workweek. The 4/10 schedule provides for a 40 hour workweek every seven days and three consecutive days off.

4/10 scheduling will be at the discretion of the Police Chief.

- C. Work Period. The work period for employees on the 4/10 who are exempt or non-exempt from FLSA requirements will remain the same Saturday through Friday. There are two 40 hour work periods per pay period. This schedule coincides with the current payroll reporting period.
- D. Payroll Period Report Dates – All Employees. Payroll will still be reported in accordance with our payroll calendar for all employees, including those on the 4/10 plan.
- E. Payroll Reporting.
1. If an employee uses sick time, vacation time, holiday time or compensation time earned during the pay period and this time had not been reported on the payroll report submitted Monday morning, the time taken must be submitted to Finance by memo.
  2. If an employee is in an Absence Without Pay (AWOP) status at any time during the pay period, and this had not been indicated on the payroll report submitted on Monday morning, the supervisor or payroll clerk shall contact Finance immediately to make a payroll correction.
  3. All employees should make every effort to notify their supervisor on Thursday, if they will be using sick leave or AWOP time on Friday.

F. Enrolling in or Dropping off the 4/10 Plan.

1. Prior to enrollment in the 4/10 plan, each employee is required to read the 4/10 plan guidelines and sign a statement that he/she has read all the conditions of the plan. A copy will be placed into the employee's personnel file in the Human Resources office.

To expedite future shift changes that affect many employees' work plans and/or changes many employees' days off, a memo listing each employee's new work schedule and days off should be signed by each employee affected and submitted to Finance for payroll changes and to Human Resources where a copy of the memo will be filed in each affected person's employee file. These changes must coincide with the beginning of a new pay period.

2. When an employee separates from employment, the employee will be paid for all hours worked.
3. When an employee changes to a different work schedule, it must coincide with the start of a pay period.

G. Leave Time Accruals. Benefit leave time accruals will remain the same as designated in this MOU.

H. Holidays. For personnel not assigned to a unit operating on a 24 hour basis and with the approval of the employee's supervisor, when a holiday falls on a scheduled workday the employee may (but will not be required to) take the day off on holiday pay. When a holiday falls on a non-scheduled workday the employee may (but will not be required to) take off one day at a later date as agreed to by their supervisor.

When a floating holiday is taken, non-sworn employees taking the holiday on a 10 hour day will be charged 10 hours.

Non-sworn employees who are assigned to a unit operating on a 24-hour basis will not be required to take an additional day off when a holiday falls on their regularly scheduled day off.

I. Paid Sick Time/Vacation.

1. Employees using paid sick leave on a 10 hour day will be charged 10 hours.
2. If the scheduled hours are greater than the sick leave balance, the difference will be covered, by:
  - a. Use of vacation or compensatory time.

- b. Other Leaves
  - c. Leave without pay
3. Vacation is charged in the same manner. Vacations occurring on 10-hour days will be charged 10 hours.
- J. Workers Compensation. Employees will be paid industrial accident leave hours in accordance with their current 4/10 work schedule. An employee will return on the same 4/10 work schedule.
- K. Military Leave, Jury Duty and Paid Extended Sick Leave. Employees ordered to military duty, summoned to jury duty, or on paid extended sick leave will be paid according to their current work schedule. After the completion of the military leave, jury duty, or paid extended sick leave, the employee will return to his/her regular 4/10 work schedule. An employee shall not receive overtime (pay or comp time) when such leave falls on his/her day off.
- L. Meal Period. At the discretion of the Chief of Police, employee meal periods may be paid time. Employees understand that during such meal periods they are subject to calls for service. The Chief of Police shall determine who is included in meal period as part of work day.
- M. Department Head Responsibility. Changes in an employee's 4/10 work schedule must be coordinated through the department head, AQMD Transportation Coordinator/Administrative Analyst and Finance to ensure that the changes to and from the 4/10 Plan coincide with the beginning of a pay period.
- N. 4/10 Plan Review. A decrease in productivity will represent a negative impact to the alternative work plans. Productivity may be measured by various criteria which may include, but not limited to:
- Sick leave usage
  - Inadequate staffing
  - Measurable work output
  - Employee turnover
  - Tardiness
  - Employee morale
- Moreover, other impacts include service delivery to the public including citizen input through compliments, commendations, or complaints, energy savings, and related costs or funding to the City.
- O. In the event the 4/10 Work Schedule is revoked in accordance with Article 36, all personnel assigned to a 4/10 Work Schedule prior to March 1, 1992, shall not be subject to the revocation.

**ARTICLE 40 – 3/12 PLAN**

Effective June 12, 2007, the City shall implement and evaluate a “3/12½ Alternative Work Schedule” for a period of one year, commencing with the Patrol Schedule of Summer 2007, and concluding at the end of Spring 2008 Patrol Schedule.

- A. The intent is to determine the effectiveness and efficiency of the Operations Division work force in providing service to the community while working an alternative work schedule that includes a 3/12 component. For purposes of this evaluation period, only personnel assigned to Patrol and Dispatch will participate in this evaluation program.
- B. During this evaluation period, there will be no additional costs (direct or indirect) to the City as a result of the modified work schedule, specifically related to overtime and time-off accruals such as sick leave, vacation, holidays, etc. All such accruals will remain unchanged.
- C. Patrol personnel assigned to the 3/12 will work three days each week consisting of 12 ½ hour shifts, totaling 150 hours in a 28 day period. Each employee on such schedule will work one additional 10 hour shift in that same 28 day period. The total number of hours scheduled in such period of time will be 160 hours.
- D. Dispatch personnel assigned to the 3/12 will work three days each week consisting of 12 hour shifts, totaling 72 hours in a two week pay period. Each employee on such schedule will work on additional eight hour shift in that same pay period. The total number of hours scheduled in such pay period will be 80 hours, or 160 hours in a 28 day period.
- E. At the conclusion of this evaluation period, a review will be conducted by the City to determine the effectiveness of this alternative work schedule. A decrease in productivity will represent a negative impact to this alternative work schedule. Productivity may be measured by various criteria which may include but are not limited to:
  - Sick leave usage
  - Inadequate staffing
  - Measurable work output  
(Arrest/ Citation statistics etc.)
  - Employee turnover
  - Tardiness
  - Employee morale
  - Employee traffic collisions

Other impacts include service delivery to the public, including citizen input through compliments, commendations, or complaints, energy savings, and related costs or funding to the City.

- F. The decision to implement any alternative work schedule is at the sole discretion of the City. An alternative work schedule may be revoked at any time by the City as long as 30 days notice of revocation is given to the Association and employees. Any

modified work schedule shall not be considered a vested right or benefit and the City has no obligation to meet-and-confer. However, the City agrees to meet with the Association prior to such revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

#### **ARTICLE 41 – SUBSTANCE ABUSE**

- A. It is the responsibility of all affected employees to cooperate to protect the lives, personal safety and property of co-workers and fellow citizens. The parties hereto and all affected employees shall take all reasonable steps to accomplish these goals and to minimize potential dangers.
- B. It is in the best interest of the City, the Association, employees and the public to ensure that employees do not appear for work under the influence of drugs or alcohol, or possess illegal substances or alcohol while at work, because such conduct is likely to result in reduced productivity, an unsafe working environment, poor morale and increased potential liability to the City. “Under the influence” means the knowing use of alcohol or illegal substance or knowing misuse of a prescribed drug in a manner and to a degree that substantially impairs the employee’s work performance or the ability to use City property or equipment safely.
- C. An employee not on paid standby who is called at home to return to work may decline to return if he/she feels physically unable to perform his/her job even if the employee perceives that the inability to perform is the result of having consumed alcoholic beverages. No reason need be given by the employee and the employee shall not be subjected to discipline for his/her refusal to return to work.
- D. The City provides an Employee Assistance Program for employees who have problems with drugs and/or alcohol. Every effort shall be made by the City to refer employees who have such problems to this counseling service for assistance.
- E. The City may, upon showing of reasonable suspicion that this policy is being violated, compel an employee who is unable to perform the duties of his/her position to submit to a medical examination on City time and at the City’s expense. “Reasonable suspicion” is a belief based on objective and articulable facts sufficient to lead a reasonable and prudent supervisor to suspect that an employee is “under the influence” in that the employee’s ability to perform the functions of the job is impaired or the employee’s ability to perform his/her job safely is reduced. Allegations of harassment pursuant to this paragraph shall be reported to the Human Resources office. The Human Resources office shall conduct an investigation into the alleged harassment and take appropriate corrective action as a result of its investigation. Nothing contained herein shall limit the City’s right to discipline or discharge any employee.

#### **ARTICLE 42 – NO SMOKING CLAUSE**

Employees who become unit employees on or after January 1, 1987, shall, as a condition of their continued employment, refrain from smoking tobacco or any other non-tobacco substance at any time on or off duty. Violation of this condition of employment shall be deemed good cause for dismissal.

#### **ARTICLE 43 – BUMPING PROCEDURE**

In the event of layoff, the following procedure shall be used:

- A. All employees in each classification shall be rank ordered based on seniority in classification, irrespective of total City seniority. (In the event of a tie in seniority in classification, the person with the greatest Citywide seniority shall be deemed to have the highest seniority in classification.) The employee(s) with the least seniority in that classification shall be the first person(s) laid off.
- B. In the event that the classification series (i.e. Police Lieutenant, Police Sergeant, Police Corporal, Police Officer) from which the employee is laid off has a lower classification with incumbents, the laid off employee (irrespective of the laid off employee's seniority in the lower classification and/or total City seniority) may "bump" one of those incumbents out of the classification and assume his/her position. The determination of which incumbent is bumped shall be made pursuant to paragraph A.

Bumping in each classification in the classification series shall continue until incumbents are bumped out of the lowest classification in the classification series.

- C. The names of employees who have been laid off shall be placed on appropriate re-employment list in order of seniority, from highest to lowest. Such names shall remain on the re-employment list for a period of 18 months unless such persons are sooner re-employed. A re-employment list shall be used prior to establishing either an open or closed eligibility list.
- D. When a re-employment list is used to fill vacancies, the personnel officer shall certify from the top of such list, the number of names equal to the number of vacancies. An employee who is re-employed shall receive credit for former services for purposes of seniority, benefit compensation and salary advancement.

#### **ARTICLE 44 – PUBLIC SAFETY OFFICER PROCEDURAL BILL OF RIGHTS**

The City agrees to abide by the requirements of the Public Safety Officer Procedural Bill of Rights Act, Government Code Section 3300 *et seq.*

**ARTICLE 45 – GRIEVANCE PROCEDURE/CIVIL SERVICE ORDINANCE AND RESOLUTION**

The City of Buena Park Civil Service Ordinance No. 437 and Resolution No. 1883, both as amended to date, are incorporated herein. In addition to the rights set forth therein, the parties agree to the following grievance procedures:

A. DEFINITION. A grievance shall be considered as any matter for which appeal is not provided for concerning a dispute about the interpretation or application of this Memorandum of Understanding, or any ordinance, rule or regulation governing personnel practices or working conditions.

B. PURPOSE.

1. To promote improved employer-employee relations by establishing grievance procedures on matters for which appeal or hearing is not provided by other regulations.
2. To afford employees individually or through a qualified employee organization a systematic means of obtaining further consideration of problems after every other reasonable effort has failed to resolve them through discussions.
3. To provide that grievances shall be settled as near as possible to the point of origin.
4. To provide that grievances shall be heard and settled as informally as possible.

C. PROCEDURE. Whenever an employee feels that the policy of the City is not being appropriately applied to his/her circumstance, he or she can file a grievance to resolve the dispute. The limitation on filing a grievance must be within sixty (60) calendar days from the date the employee or the Association first became aware of, or should have become aware of, the issue(s) underlying the grievance. To file a grievance, he or she shall take the following action(s):

1. The dispute should be discussed fully with the employee's most immediate supervisor who should make every effort to resolve the dispute in a fair and equitable manner and in accordance with established policy. After the employee and the supervisor have discussed the incident, the supervisor will give the employee a written response within two working days.
2. The process described above shall continue through the line of supervision, up to and including the department head, if the aggrieved party is not satisfied with the response at the initial or preceding step(s). However, the employee must notify the Lieutenant and above of the dispute in writing. At the level of Lieutenant and above, the employee will receive a written response within five working days.

3. Should the dispute not be resolved by the department head, the employee will notify the Director of Human Resources of the dispute in writing. The Director of Human Resources will interview both parties in the dispute and others affected and report those findings to the City Manager and recommend steps to be taken to resolve the problem within the Department. Within 10 working days, the parties will be provided with a written response from the City Manager. The City Manager's decision shall be the final step in the Administrative process.

#### **ARTICLE 46 – ADVISORY ARBITRATION**

City Council Resolution 1883, Personnel Rules and Regulations, Rule XVI, Section 2 and Section 5 shall be amended and is incorporated herein and attached as Exhibit F.

#### **ARTICLE 47 – PERFORMANCE EVALUATION**

Performance evaluations may not be appealed to the Personnel Board. The appeal process shall end at the City Manager level as provided in the grievance procedure.

#### **ARTICLE 48 – MEDICAL EXAMINATION**

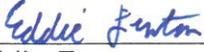
The City shall provide an annual medical exam to sworn employees on a voluntary basis.

- A. The City shall pay the entire cost of such examination.
- B. The results of the examination shall be disclosed only to the individual participant and neither the City nor the Association shall have any rights to an individual's examination results, or general or specific medical information obtained from such examination.
- C. Neither the City nor the Association shall take any steps to inquire about any general or specific medical information obtained by any party as a result of the employee's participation in this Program.
- D. All medical examinations shall be conducted while the employee is in a paid capacity.
- E. The examination shall, at a minimum, entitle employee to a blood test, and for those age 40 or older a "Live-Scan" heart examination once every three years, and a treadmill test. The blood test shall not screen employees for drugs or alcohol.

**SIGNATURES**

Revised MOU adopted June 26, 2018

FOR THE  
CITY OF BUENA PARK



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Eddie Fenton  
Director of Human Resources



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Alice Burnett  
Senior Human Resources Analyst

FOR THE BUENA PARK  
POLICE ASSOCIATION



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Roger Plumlee  
President



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Dirk O'Dette  
Vice-President



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Maria Esquetini  
Secretary

**EXHIBIT A**

**SWORN GROUP – PAY SCHEDULE – EFFECTIVE JUNE 30, 2018**

Position	Range	Step 1			Step 2			Step 3			Step 4			Step 5			Step 6		
		Hr.	Mo.	Ann.	Hr.	Mo.	Ann.	Hr.	Mo.	Ann.	Hr.	Mo.	Ann.	Hr.	Mo.	Ann.	Hr.	Mo.	Ann.
Officer	345	35.87	6,218	74,618	37.68	6,531	78,369	39.55	6,855	82,255	41.52	7,197	86,369	43.61	7,559	90,710	45.79	7,936	95,233
Corporal	348	38.66	6,701	80,414	40.59	7,036	84,437	42.63	7,389	88,665	44.77	7,760	93,120	46.99	8,144	97,734	49.35	8,554	102,643
Sergeant	354	46.53	8,065	96,779	48.84	8,466	101,597	51.29	8,891	106,689	53.87	9,338	112,053	56.56	9,804	117,644	59.38	10,292	123,508

\*Monthly and Annual Salary are only approximate rates based on the Hourly conversion.

**EXHIBIT B**

**NON-SWORN GROUP - PAY SCHEDULE – EFFECTIVE JUNE 30, 2018**

Position	Range	Step 1			Step 2			Step 3			Step 4			Step 5			Step 6		
		Hr.	Mo.	Ann.	Hr.	Mo.	Ann.	Hr.	Mo.	Ann.									
Administrative Assistant	225	22.16	3,841	46,087	23.27	4,034	48,403	24.44	4,236	50,829	25.66	4,447	53,364	26.94	4,669	56,030	28.28	4,902	58,827
Crimes Analyst	243	33.34	5,778	69,338	35.00	6,066	72,791	36.75	6,370	76,440	38.59	6,689	80,264	40.52	7,024	84,285	42.54	7,373	88,481
Crimes Analyst Assistant	227	22.45	3,892	46,699	23.58	4,086	49,037	24.75	4,290	51,484	26.00	4,507	54,085	27.29	4,731	56,773	28.65	4,966	59,592
Forensic Specialist	234	26.66	4,622	55,462	27.99	4,851	58,215	29.40	5,095	61,143	30.87	5,350	64,203	32.40	5,616	67,393	34.03	5,898	70,780
Information Systems Administrator	251	41.58	7,208	86,492	43.65	7,566	90,797	45.85	7,947	95,364	48.14	8,344	100,128	50.54	8,761	105,132	53.08	9,200	110,399
Information Systems Technician	242	32.50	5,632	67,590	34.12	5,915	70,977	35.83	6,210	74,517	37.61	6,519	78,232	39.50	6,847	82,165	41.47	7,188	86,252
Parking Enforcement Specialist	221	19.37	3,358	40,296	20.34	3,526	42,306	21.36	3,702	44,426	22.42	3,886	46,633	23.54	4,081	48,971	24.72	4,285	51,419
Police Dispatcher	431	25.91	4,491	53,888	27.21	4,716	56,598	28.57	4,951	59,417	29.99	5,199	62,389	31.50	5,459	65,514	33.07	5,733	68,792
Police Dispatcher Supervisor	245	35.02	6,070	72,842	36.77	6,374	76,482	38.59	6,689	80,267	40.54	7,027	84,323	42.56	7,377	88,525	44.69	7,746	92,955
Police Lead Dispatcher	235	29.33	5,084	61,012	30.79	5,337	64,050	32.33	5,603	67,240	33.94	5,884	70,605	35.66	6,181	74,167	37.43	6,488	77,860
Police Records Clerk	419	19.60	3,398	40,777	20.57	3,566	42,787	21.60	3,744	44,929	22.68	3,932	47,180	23.82	4,128	49,540	25.01	4,336	52,031
Police Records Supervisor	241	31.72	5,498	65,973	33.30	5,773	69,272	34.96	6,060	72,725	36.72	6,365	76,374	38.56	6,683	80,199	40.49	7,018	84,219
Police Recruit	231	24.78	4,296	51,550	26.03	4,513	54,150	27.33	4,737	56,838	28.70	4,975	59,701	30.13	5,223	62,673	31.63	5,483	65,798
Police Services Officer	424	21.25	3,684	44,208	22.31	3,868	46,415	23.43	4,061	48,731	24.59	4,263	51,157	25.82	4,476	53,713	27.12	4,700	56,401
Property Technician	230	24.17	4,190	50,283	25.38	4,400	52,796	26.65	4,620	55,440	27.98	4,849	58,193	29.39	5,093	61,121	30.86	5,348	64,181
Senior Account Clerk	223	21.12	3,660	43,923	22.18	3,844	46,131	23.29	4,037	48,447	24.46	4,239	50,873	25.69	4,452	53,429	26.96	4,673	56,073
Sr. Administrative Assistant	228	23.80	4,125	49,496	25.00	4,334	52,009	26.24	4,549	54,587	27.55	4,775	57,297	28.93	5,015	60,182	30.38	5,266	63,197

\*Monthly and Annual Salary are only approximate rates based on the Hourly conversion.

### **EXHIBIT C – COMPENSATION PLAN**

- A. **PURPOSE.** The purpose of this Plan is to establish a Merit system of compensation for all Police Department employees based upon performance and productivity, with due consideration for all qualities of service and contribution to the City.
- B. **SALARY RANGES AND SALARY RATES.** The establishment of salary ranges and salary rates and the allocation of classes thereto shall be by Resolution of the City Council. The type of appointment shall determine whether an employee's salary rate shall be on a biweekly or hourly basis.
1. **Full-time Probationary, Provisional, Temporary, and Acting Appointments.** An employee having a provisional, probationary, or acting appointment that is on a full time basis, shall be compensated at a biweekly rate.
  2. **Other Appointments.** An employee having any other type of appointment shall be compensated at an hourly rate.
- C. **RESPONSIBILITIES OF CITY MANAGER.** Employees shall be paid at biweekly or hourly rates as determined by the City Manager, subject to the provisions of this Resolution.

At least annually the City Manager shall review the existing Compensation Plan and recommend to the City Council a salary range and salary rates for each class for which the City Manager is the appointing authority. In determining salary ranges and salary rates, consideration shall be given to both basic pay, fringe benefits, and working conditions.

D. **COMPENSATION PROCEDURES - SALARY SCHEDULES.**

1. **Entry Level Salary Rates:**
  - a. **In General.** Except as otherwise provided herein, all new employees shall be appointed at Step 1 of the salary range in effect for the class in which the appointment is made.
  - b. **Exceptions.** The City Manager may authorize such new appointments at a salary rate up to Step 6 of the appropriate salary range, when the City Manager determines that equity among employees and the interests of the City will best be served.
  - c. **Temporary Appointees.** Persons employed or re-employed for part-time, temporary, or seasonal service may, upon written recommendation of the Department Head and approval of the City Manager, be compensated at any rate established for the class.

- d. Acting Appointments. Acting appointments may carry additional compensation if recommended by the Department Head and approved by the City Manager, or when the City Manager determines that equity among employees and the interests of the City will best be served.
2. Step Increases Within the Range. All salary increases within the range shall be made in five percent increments whenever possible.
    - a. Step 1 is the minimum rate and is normally the hiring rate for the class.
    - b. Employees are eligible to progress through the second and third steps anytime after completion of six months of service at the preceding step. These salary increases are awarded in recognition of good performance and as an incentive to continued work improvement. These increases shall be made only if recommended by the Department Head and approved by the City Manager.
    - c. Employees are eligible for additional salary increases to the fourth, fifth and sixth steps anytime after completion of one year of service at the preceding steps on their salary anniversary date. These increases shall be made only if recommended by the Department Head and approved by the City Manager and are awarded in recognition of good performance and as an incentive for continued work improvement.

#### E. COMPENSATION UPON PROMOTION.

1. Every promotion from one class to a higher class shall carry a minimum salary increase of five percent. In the event a promotion is made within six months of the employee's salary anniversary date, the placement on the new range shall be to the step of the new range which shall be seven and one-half percent or 10% over the current rate.
2. The probation and salary procedures for the position shall follow those prescribed in the various applicable paragraphs of Section E.
3. For promotion to a management position the probation and salary procedures shall follow those prescribed in the various applicable provisions of the Management Compensation Plan.

#### F. COMPENSATION ON DEMOTION.

1. Involuntary Demotion. An employee who is involuntarily demoted shall be reduced in salary to the nearest lowest salary rate of the class of position to which demoted. The employee shall not be required to serve a probationary period in the lower position unless specifically determined by the City Manager.

2. Voluntary Demotion. An employee who is demoted at the employee's own request shall retain the current salary rate if such rate is within the salary range of the lower classification. If the employee's salary rate prior to the demotion was higher than the maximum salary of the lower position, the employee shall receive the latter. The employee shall not be required to serve a probationary period in the lower position unless specifically determined by the City Manager.

G. FAILURE TO COMPLETE PROBATION PERIOD. The compensation of an employee who is rejected during a probation period in a classification and who is assigned to a classification having a lower salary range shall be as follows:

1. If the employee had previously completed a probation period in a lower classification, the employee shall not be required to serve another one; the employee's last salary rate in the lower position shall be the new salary rate upon reassignment to that position and the employee shall earn eligibility to receive subsequent merit salary advancements in accordance with appropriate paragraphs in Section D or E.
2. If the employee had not previously completed a probation period in a lower classification, the effective date of reassignment to that class shall be the employee's new probationary anniversary date, and the employee shall be required to serve a probation period.

H. COMPENSATION ON POSITION RECLASSIFICATION. The salary of an employee in a position that is reclassified shall be determined as follows:

1. Class With Same Salary Range. If the position is reclassified to a class with the same salary range as the previous class, and if the incumbent is appointed to the reclassified position, the salary rate and the salary review date of the employee shall not be changed. This provision shall also apply to a change of class title provided there is no change in the basic duties of the position.
2. Class With Higher Salary Range. If the position is reclassified to a class with a higher salary range than the previous class, and if the incumbent is appointed to the reclassified position, the salary of the employee shall be governed by the Section on Compensation Upon Promotion.
3. Class With Lower Salary Range. If the position is reclassified to a class with a lower salary range than the previous class, and if the incumbent is appointed to the reclassified position, the employee's salary shall not change, and the employee shall not be required to serve a new probation period.

I. COMPENSATION ON TRANSFER. The salary rate and salary review date of an employee who is transferred in class shall not change.

- J. COMPENSATION FOR PORTION OF PAY PERIOD. A regular or probationary appointee serving on a full-time basis who works less than a full biweekly pay period, except when on authorized leave of absence with pay, shall receive as compensation for such period an amount equal to the number of hours worked times the employee's hourly rate. The number of hours worked in such pay period shall include paid holidays.
- K. CHANGE IN CLASS SALARY RANGE. If a class is allocated to a different salary range, an employee in a position in that class shall be compensated at the same lettered step in the new range as the employee was receiving in the previous range, and the salary review date shall not change.
- L. COMPENSATION FOR ACTING APPOINTMENTS. Subject to the following conditions, an employee who is required on the basis of an acting appointment to serve in a class with higher salary range than that of the class in which the employee is normally assigned shall receive the entry level salary rate of the higher salary range or the rate five percent (5%) higher than the rate the employee normally receives, whichever is greater, for all such hours assigned.
1. The employee must perform all the duties and assume all the responsibilities of the higher class.
  2. Compensation for acting appointments shall be limited to the temporary filling of a vacant regular position due to termination, promotion, or extended sick leave of the incumbent or the temporary filling of newly budgeted positions, where the needs of the City require that the position be filled.
  3. Acting appointments shall not receive merit increases and shall not be permitted for a period in excess of six continuous months, except in the manner provided in Section 2.20.080 of the Buena Park City Code.
  4. The City Manager must approve all such appointments upon findings meeting the criteria set forth in this paragraph.
- M. CHANGES IN SALARY ANNIVERSARY DATE. The granting of any leave of absence without pay exceeding 30 calendar days shall result in a new salary anniversary date plus the number of calendar days of the employee's leave in excess of 30 calendar days.
- N. PROBATIONARY APPOINTMENT FOLLOWING PROVISIONAL APPOINTMENT. Notwithstanding the other provisions of this Resolution, a provisional appointee in a class who, without a break in service, receives a probationary appointment to a position in the same class shall be eligible for consideration for a salary advance after six months of satisfactory service, including the employee's provisional service, as evidenced in writing by the Department Head and approved by the City Manager, and shall accrue leave benefits from the date of the provisional appointment.

The employee's probation period shall commence with the date of the provisional appointment. Satisfactory completion of such probation period shall be on written recommendation of the Department Head and approval of the City Manager.

The salary advance provisions of this section shall not apply when a provisional appointee in a class receives, without a break in continuous City service, a probationary appointment to a position in a different class having a higher salary range. The salary review date of such appointee shall be the date of the probationary appointment.

- O. CONSIDERATION OF EMPLOYEE REQUESTS. Any employee shall have the right to consideration by the City Manager of any request with respect to a claimed inequity resulting from the strict application of any of the sections contained herein. The employee shall submit to the Department Head a written statement of the claimed inequity and employee request. The Department Head shall promptly forward the statement and the request along with the Department Head's written recommendation to the City Manager.
- P. CONTINUITY OF SERVICE REQUIREMENTS. Continuous service, as required for advancement within salary ranges and for other purposes specified in this Resolution, is defined as City Employment on a probationary, regular, or acting appointment basis without break or interruption.
- Q. AVOIDANCE OF INEQUITIES. The City Manager may authorize special adjustments to avoid or eliminate inequities resulting from the strict application of any of the provisions of this Resolution.
- R. ADMINISTRATIVE REGULATIONS. The City Manager is authorized to issue written administrative personnel regulations designed to augment or clarify the provisions of this Resolution. Prior to issuance, such regulations shall be referred to the City Attorney as to their conformance with this Resolution. At least annually, such regulations shall be considered for possible incorporation in a revision of this Resolution.

## **EXHIBIT D – HIRING OF EMPLOYEE RELATIVES**

The hiring of relatives of City employees is based upon the following criteria:

A "relative" is defined as a spouse, child, step-child parent, step-parent, parent-in-law, legal guardian, brother, sister, brother-in-law, sister-in-law, step-brother, step-sister, aunt, uncle, niece, nephew, grandchild, grandparent, regardless of their place of residence, or any other individual related by blood or marriage living within the same household as the City employee.

An "employee" is defined as any person who receives a City payroll check for services, full or part-time rendered to the City of Buena Park.

The employment of relatives of City employees within the City of Buena Park is limited to the following situations: Any relative of a Councilmember or the City Manager shall not be considered for employment within the City of Buena Park in any capacity, either full-time or part-time.

Any relative of a City-appointed commissioner, board or committee member, or department manager, may not be considered for employment within the department or area of responsibility of such City-appointed commissioner, board or committee member or department manager. The employment of relatives of all other City employees is prohibited within the department of the existing employee when such related employee may: perform joint duties, share responsibility or authority; report to the same immediate supervisor; or be supervised by or would supervise a relative.

Relatives of City employees, except for relatives of Council members, the City Manager, City-appointed commissioners, board or department managers may be hired for seasonal assignments. However, such employment shall not exceed twenty 20% of the complement of seasonal employees in that classification and shall be selected only by an open recruitment process.

City employees who are related as described above, shall not be affected in their current job status except when the City Manager determines that the circumstances of such employment raises an undue hardship upon the other employees within the particular work unit and that such employment is detrimental to the supervision, safety, security or morale of the particular work unit.

If two existing City employees become married and their employment conflicts with the policy stated above, they may continue employment provided that such employment does not directly or indirectly place an undue hardship upon other employees within the particular work unit of the married couple and such employment is not detrimental to the supervision, safety, security or morale of the particular work unit. The City Manager shall determine whether or not such detriment or undue hardship exists.

The City Manager is authorized to issue written guidelines to implement and enforce this policy. All determinations made by the City Manager shall be final and conclusive and not subject to Section 2-136 of the Administrative Section of the City Code. In all situations where the City Manager determines a conflict to exist between existing or future related employees, the City Manager shall attempt to resolve such conflict in the following manner:

- A. Attempt to redefine the job responsibilities of the related employees within the department to minimize the conflict.
- B. If such redefinition of job status is not feasible, attempt to transfer one of the employees to a similar position (without guarantee or identical salary) that would not be in violation of this policy.
- C. If transfer is not feasible or acceptable, request the voluntary resignation of one of the employees.
- D. If one of the employees does not voluntarily resign, the employee with the least employment experience in the City of Buena Park may be discharged by the City Manager.

## **EXHIBIT E – HARASSMENT IN EMPLOYMENT POLICY**

### **I. PURPOSE OF POLICY**

- A. To define and issue to all employees the City's policy on the prohibition and prevention of harassment, discrimination, retaliation and bullying in the workplace.
- B. To fully inform all employees of their right to have a safe work environment and be free of unlawful harassment, discrimination, retaliation, and bullying in the workplace.
- C. To fully inform all employees that the City of Buena Park does not and will not tolerate any conduct that is believed to violate this Policy in the workplace.
- D. To inform all employees of their rights if they believe that they are or have been the victim of harassment, discrimination, retaliation, and bullying.
- E. To provide a means for the prompt reporting and full and effective investigation of harassment, discrimination, retaliation, and bullying complaints and to provide for effective remedial action against the harasser and for the victim.

### **II. STATEMENT OF POLICY**

It is the Policy of the City that it will not tolerate verbal or physical conduct by any employee which harasses, discriminates, retaliates, disrupts, or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. In addition to prohibiting all forms of harassment, discrimination and retaliation, the City also prohibits any form of "intimidation or bullying" in the workplace or elsewhere, such as at offsite events.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below is prohibited and will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Harassment violates Title VII of the Civil Rights Act of 1974, the California Government Code, and regulatory guidelines of the Equal Employment Opportunity Commission and the California Fair Employment and Housing Commission.

All employees will be expected to comply with this Policy and take appropriate measures to ensure that such conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this Policy against harassment, discrimination, retaliation, and bullying in the workplace. Based on the seriousness of the offense, disciplinary action will be taken up to and including termination.

When a violation of this Policy is reported, an investigation shall be conducted to determine if there was knowledge, or should have been knowledge, on the part of any supervisor, and whether any supervisor had failed to take immediate and appropriate corrective action.

Negligent supervision, tacit approval by “turning a blind eye”, treating the situation as a joke, failure to take action, or concealing a situation will subject the supervisor involved to disciplinary action.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

### **III. DEFINITION OF HARASSMENT**

- A. Protected Classifications: This policy prohibits harassment or discrimination because of an individual’s protected classification. “Protected Classification” includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), and military or veteran status.
- B. Policy Coverage: This Policy prohibits the employer, elected or appointed officials, officers, employees, or contractors from harassing or discriminating against applicants, officers, officials, employees, unpaid interns, volunteers, or contractors because of: 1) an individual’s protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

- C. Discrimination: This policy prohibits treating individuals differently because of the individual's protected classification as defined in this Policy.
- D. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct that city employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:
1. Verbal Harassment – For example, epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
  2. Physical Harassment – For example, assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, proposition, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
  3. Visual Forms of Harassment – For example, derogatory posters, notices, bulletins, cartoons, emails, pictures or drawings related to a protected classification.
  4. Sexual Harassment – Unwelcome sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or creates an intimidating, hostile or offensive work environment.
- E. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:
1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
  2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.

3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
  4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
  5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).
- F. Retaliation: Any adverse conduct taken because an applicant, employee or contractor has reported harassment, discrimination, or bullying or has participated in the complaint and investigation process described herein, is prohibited. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment, discrimination, or bullying, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment, discrimination, or bullying, or real or implied threats of intimidation to prevent an individual from reporting harassment, discrimination, or bullying. The following individuals are protected from retaliation: those who make good faith reports of harassment, discrimination, or bullying, those who associate with an individual who is involved in reporting harassment, discrimination, or bullying, and those who participate in the complaint or investigation process.

#### **IV. DEFINITION OF BULLYING**

- A All employees, consultants, independent contractors, and visitors have the right to be treated with respect. Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening environment.
- B Bullying comes in many shapes and sizes and can take many forms including, but not limited to, excluding, tormenting, taunting, abusive comments, using threatening gestures; pushing, shoving, punching, unwanted physical contact, or any use of violence; graffiti; name calling,

sarcasm, spreading rumors, and teasing. Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chat room misuse, mobile threats by text messaging, or calls or misuse of cameras and video equipment. Under certain circumstances, bullying can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public.

**V. DEFINITION OF EMPLOYEE**

For the purposes of this policy, an employee shall be defined as any individual, regardless of classification, employed by the City of Buena Park, or job applicants, unpaid interns, volunteers, or contractors working under the supervision of the City, vendors and contract employees.

**VI. COMPLAINT PROCEDURE**

A Any employee, job applicant, unpaid intern, volunteer, or contractor who believes he or she has been the subject of harassment or any form of bullying should report the alleged act immediately verbally or in writing with any of the following. There is no need to follow the chain of command:

1. Immediate supervisor;
2. Any supervisor or manager within or outside of the department;
3. Department Head; or
4. Director of Human Resources.

B The limitation on reporting alleged acts of harassment, discrimination, retaliation, and bullying must be within twelve months of the incident or incidents.

C If a complaint involves a supervisor or manager, the complaint shall be filed directly with the department head or Director of Human Resources.

D Any supervisor or department head who receives a harassment, discrimination, retaliation, or bullying complaint is to immediately notify the Director of Human Resources.

E Upon notification of a harassment, discrimination, retaliation or bullying complaint, the Director of Human Resources will:

1. Inform the complainant of his or her right to initiate the complaint.

2. Authorize the investigation of the complaint and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint.
  3. Investigation of a complaint will include interviewing the complainant, accused harasser and any named or apparent witness. Employees shall be protected from coercion, intimidation, retaliation, interference, or discrimination for filing a complaint or assisting in an investigation.
  4. All complaints will be handled in a timely and confidential manner. In no event will information be released to anyone who is not involved with the investigation; nor will anyone involved be permitted to discuss the subject outside the investigation.
  5. Review factual information gathered through the investigation to reach a reasonable conclusion to determine whether the alleged conduct constitutes harassment, discrimination, retaliation, or bullying giving consideration to all factual information, the totality of the circumstances, including the nature of the verbal, physical, visual or sexual favor aspect of the advance, and the context in which the alleged incidents occurred.
  6. Timely report a summary of the results of the investigation and the determination as to whether harassment, discrimination, retaliation or bullying occurred to the appropriate person including complainant, alleged harasser, supervisor, and the department head. If discipline is imposed, the level of discipline will not be communicated to the complainant.
  7. If conduct in violation of this Policy occurred, take and/or recommend to the department head prompt and effective remedial action against the harasser. The remedial action will be commensurate with the severity of the offense. Notify the victim that necessary steps of corrective action have been taken to resolve the problem.
  8. Reasonable steps will be taken to protect the victim and other potential victims from further harassment, discrimination, retaliation, or bullying.
  9. Reasonable steps will be taken to protect the victim from any retaliation as a result of communicating the complaint.
- F The city takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, retaliation or bullying may be occurring, regardless of whether the recipient or third party reports a potential violation.
- G Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment

Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal and a complaint process. The nearest offices and telephone numbers are listed on the posters that are located on City bulletin boards at the following locations:

- Human Resources Office
- Community Center
- Police Department
- City Yard
- Ehlers Event Center
- California Welcome Center

## **VII. CONFIDENTIALITY**

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. However, complete confidentiality cannot occur due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The employer will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

## **VIII. RESPONSIBILITIES**

Elected Officials, Appointed Officials, Managers, and Supervisors are responsible for:

1. Modeling appropriate and respectful behavior.
2. Informing employees, volunteers, and contractors of this Policy.
3. Taking all steps necessary to prevent harassment, discrimination, retaliation or bullying from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language and behavior.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.

7. Informing those who complain of harassment, discrimination, retaliation or bullying of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
8. Assisting, advising, or consulting with employees and the Director of Human Resources regarding this Policy and Complaint Procedure.
9. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Rules and Regulations, up to and including termination.
10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Director of Human Resources or the department head.
12. Participating in periodic training and scheduling employees for training.

Each employee or contractor is responsible for:

1. Modeling appropriate and respectful behavior.
2. Treating all employees, volunteers, and contractors with respect and consideration.
3. Participating in periodic training.
4. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Maintaining the confidentiality of any investigation that the City conducts by not disclosing the substance of any investigatory interview, except as directed by the department head or Director of Human Resources.
6. Reporting any act he or she believes in good faith constitutes, harassment, discrimination, retaliation or bullying as defined in this Policy, to his or her immediate supervisor, or department head, or Director of Human Resources.

**IX. MANDATORY TRAINING**

As part of its commitment to ensuring a work environment free from bullying, harassment, and discrimination, the City requires that all of its supervisors and elected officials receive training on this Policy at least once every two years. Human Resources will schedule multiple training sessions in the Spring biennially to ensure that employees and elected officials are able to attend the mandatory training. Attendance at the training will be documented.

**X. DISSEMINATION OF POLICY**

All Elected Officials and City employees, supervisors and managers shall receive a copy of this Policy. All management personnel will be informed of their responsibilities in enforcing this policy. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this Policy.

This Policy shall be posted in appropriate places.

## **EXHIBIT F – ADVISORY ARBITRATION**

With respect to the bargaining members in this unit, City Council Resolution 1883, Rule XVI shall be amended as follows:

### **Section 2: Disciplinary Procedures**

(h) Appeal to City Manager: The employee, upon receipt of notice of the imposition of disciplinary action against him, shall have the right to appeal the Department Head's decision in writing to the City Manager, except that an oral or written reprimand may not be so appealed. Said appeal shall be delivered to the City Manager within ten (10) business days of the employee's receipt of notice of the imposition of discipline. Otherwise, the Department Head's action shall be final and binding.

Should the employee desire to appeal the Department Head's decision directly to advisory arbitration rather than having the matter reviewed by the City manager, he may do so by filing with the Human Resources Director within ten (10) business days of his receipt of the notice of imposition of discipline by the Department Head, a written appeal to the City Council. Said written appeal shall be in form and content as required by these rules and, in addition, shall state that the employee knowingly and intentionally waives his opportunity to have the action of the Department Head first reviewed by the City manager. In such a situation, the provisions of subparagraphs (h) and (i) of this Section 2 shall be deemed inapplicable to the subject proceeding.

(j) Advisory Arbitration: The employee, upon receipt of notice of the affirmation of disciplinary action against him by the City Manager, whether by way of total affirmation or modification of the Department Head's action, shall have the right to appeal the City Manager's decision in an advisory arbitration; except that an oral or written reprimand as provided by these Rules may not be so appealed. Said appeal shall be delivered to the Human Resources Director within ten (10) business days of the employee's receipt of notice of the City Manager's action. Otherwise, the City Manager's action shall be final and binding. The advisory arbitration shall be conducted in accordance with the provisions of Section 5 of this Rule XVI.

### **Section 5: Advisory Arbitration**

(a) Any regular employee shall have the right to appeal a decision by the City Manager involving dismissal, demotion, reduction in pay or suspension, or of a Department Head, if City Manager review is waived by the employee, provided, however that only one (1) advisory arbitration hearing shall be allowed as to any one (1) disciplinary action.

(b) The employee's appeal shall be heard in an advisory arbitration by an impartial hearing officer selected in a manner mutually agreeable to the City Manager and the employee; if no agreement is reached the hearing officer shall be selected from a list of

advisory arbitrators from the California State Mediation and Conciliation Service (SMCS) or from a list agreed to between the City Manager and the employee. If the parties obtain a list of arbitrators from SMCS, the City will pay SMCS's fee for providing the list.

(c) The employee may be represented by his/her Association/Union representative, any other regular employee of the City, or his/her attorney.

(d) The hearing officer shall issue subpoenas to compel the attendance of witnesses, if such be necessary at the request of either party.

(e) If both parties request that the hearing be recorded by a certified shorthand reporter, then the expenses for such recording services shall be borne equally by the City and the employee. If only one party requests that the hearing be recorded by a certified shorthand reporter, then that party alone will bear the expenses. Each party shall be responsible for any specialized or extraordinary services they might individually request.

(f) The expenses for the hearing officer shall be borne equally by the City and the Association, and each party shall be responsible for expenses they incur. The maximum expense for the hearing officer borne by the Association is \$2,000.

(g) After the close of the hearing, the hearing officer shall prepare a written advisory award and findings of fact and conclusions of law based on the evidence presented at the hearing, and shall present his/her findings to the City Council and the employee within thirty (30) calendar days, or a longer period of time as stipulated by the parties. In rendering an award, the hearing officer shall be limited to the express terms of this document and shall not have the power to modify, amend, or delete any terms or provisions of this document. Failure of either party to insist upon compliance with any provision of this document at any given time or times under any given set or sets of circumstances shall not operate to waive or modify such provision, or in any manner whatsoever to render it unenforceable, as to any other time or times or as to any other occurrence or occurrences, whether the circumstances are, or are not, the same.

(h) At the hearing, both the appealing employee and the City shall have the right to be heard and to present evidence.

(i) Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party called him/her to testify, and to rebut the evidence against him/her.

(j) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,

regardless of the existence of any common law or statutory rules that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

(k) The City Council shall review the hearing officer's recommendation, but shall not be bound thereby. The City Council shall adopt, amend, modify or reject the recommended findings, conclusions and/or opinion of the hearing officer. Prior to making a decision which adopts the hearing officer's recommendation, the City Council may order and read the transcript, at the Council's discretion. Prior to making a decision which modifies or rejects the hearing officer's recommendation, the City Council shall order and read the transcript of the Board hearing.

(l) The City Council shall not conduct a *de novo* hearing. The City Council may, at its sole option, allow limited oral arguments from either party before making a decision.

(m) The decision of the City Council shall be final and binding, subject only to review by the courts under California Code of Civil Procedure section 1094.5.

(n) The City staff shall notify the appellant in writing, within five working days of the City Council's decision. Such notice shall indicate the effective date of the action to be taken.