

JUNE 30, 2018 –JUNE 28, 2019

# BUENA PARK TECHNICAL, OFFICE & PROFESSIONALS ASSOCIATION



## MEMORANDUM OF UNDERSTANDING

No. 18-19

ADOPTED JUNE 26, 2018, RESOLUTION NO.R13813  
AMENDED JULY 10, 2018, RESOLUTION NO.R13829

**MEMORANDUM OF UNDERSTANDING  
BUENA PARK TECHNICAL, OFFICE AND  
PROFESSIONALS ASSOCIATION**

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MEMORANDUM OF UNDERSTANDING  
Between  
THE CITY OF BUENA PARK  
and  
BUENA PARK TECHNICAL, OFFICE AND PROFESSIONALS ASSOCIATION  
(T.O.P.)

**EMPLOYER – EMPLOYEE RELATIONS**

**PREAMBLE**

Pursuant to Government Code, Section 3500, *et seq.* representatives of the City of Buena Park Technical, Office and Professionals Association (hereinafter referred to as the Association) have met and conferred under the provisions of the Meyers-Millias-Brown Act (MMBA) with representatives of the City of Buena Park (hereinafter referred to as the City), and have reached an understanding 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 effective 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already in effect on June 29, 2018, shall be considered minimums for the purpose of this agreement except as amended or repealed by specific provisions hereinafter.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**

- A. 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 Technical, Office and Professionals Unit, which shall consist solely of the classifications listed in Exhibit A.
- B. All positions classified as “key personnel” should not be involved either directly or indirectly in matters within the scope of representation. “Key Personnel” shall not serve as an officer within the TOP Association. For purposes of this Article, “key personnel” includes the following classifications/positions:

Management Assistant - City Manager’s Office  
Executive Assistant – City Manager’s Office  
Human Resources Analyst  
Human Resources Specialist  
Senior Office Assistant – Human Resources

### **ARTICLE 3 – MANAGEMENT RIGHTS**

A. In order to ensure that the City is able to carry out its functions and responsibilities imposed by law, the City has and will retain the exclusive right to manage and direct the performance of City services and the work force performing such services. Therefore the following matters will not be subject to the meet-and-confer process, but shall be within the exclusive discretion of the City:

1. To determine issues of public policy;
2. To determine the merits, necessity or organization of any service or activity conducted by the City;
3. To determine and change the facilities, methods, means and personnel by which City operations are to be conducted;
4. To expand or diminish services;
5. To determine and change the number of locations, relocations, and types of operations, and the processes and materials to be employed in carrying out all City functions, including, but not limited to, the right to subcontract any work or operation;
6. To determine the size and composition of the work force, to assign work to employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments, and to establish the days and hours when employees shall work;
7. To relieve employees from duty because of lack of work or other non-disciplinary reasons;
8. To discharge, suspend, or otherwise discipline employees for proper cause;
9. To determine job classifications;
10. To hire, transfer, promote, and demote employees for non-disciplinary reasons;
11. To determine policies, procedures and standards for selection, training and promotion of employees;
12. To establish employee performance standards, including, but not limited to, quality and quantity standards;
13. To maintain the efficiency of governmental operations;
14. To take any and all necessary actions to carry out its mission in emergencies;

15. To exercise complete control and discretion over its organization and the technology of performing its work services;

16. To establish reasonable work and safety rules and regulations in order to maintain the efficiency and economy desirable in the performance of City services.

The City, in exercising these rights and functions, will not discriminate against any employee because of membership or non-membership in any employee organization.

B. All management rights, powers, authority and functions, whether heretofore or hereinafter exercised, shall remain vested exclusively with the City. No third party neutral shall have the authority to diminish any of the management rights which are included in this Article.

C. Management will meet-and-confer prior to the implementation of any management rights which are normally considered matters concerning wages, hours, and other terms and conditions of employment under the provisions of the Meyers-Milias-Brown Act.

#### **ARTICLE 4 – BOARD OF DIRECTORS’ MEETINGS**

Each member of the Association Board of Directors shall receive up to one-and-one-half hours time off per month for Board meetings.

The City will allow the Association time to hold its General membership meetings during work hours twice in a calendar year.

On duty personnel attending such meetings shall be on an on-call status and shall respond to calls for service. At no time shall coverage be compromised. No overtime or compensatory time will be paid for the meeting. Each member and their respective supervisor within each department shall be responsible for maintaining a minimum level of coverage during the meetings.

Prior to scheduling and holding a general membership meeting during work hours, the Association shall request approval in writing to the Director of Human Resources or his/her designee within seven calendar days of such meeting to be held.

#### **ARTICLE 5 – ADDITIONAL ITEMS**

During the term of this Memorandum of Understanding, no additional items will be placed under discussion for purposes of meet-and-confer unless mutually agreed upon by both parties.

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

<b>PAY</b>
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**ARTICLE 6 – ASSIGNMENT OF CLASSES TO PAY RANGES**

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

**ARTICLE 7 – BASE PAY SCHEDULE**

- A. The schedule of base pay rates is contained in Exhibit A.
- 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 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 8 – BILINGUAL PAY**

An employee shall receive an additional \$35.00 per month if the following conditions are met:

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

**ARTICLE 9 – CERTIFICATE PAY**

- A. Incumbents of the Water Quality Specialist classification who possess a California State Health Department Water Distribution 3 Operator Certification shall receive an additional \$50.00 per month.

No employee may receive more than one Certificate Pay benefit at a time. The City will complete a classification and compensation study on this position. Upon completion of the classification and compensation study, the Certificate pay shall be converted to base pay.

**ARTICLE 10 – OVERTIME PAY**

- A. OVERTIME PAY. 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
- 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 leave 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.

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 60 hours of such compensatory time. (This 60 hour maximum bank is in conjunction with Section 2 below.) Should any employee exceed 60 hours of accrued compensatory time, he/she shall be paid at time and one-half his/her regular rate.



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 60 hours of such compensatory time (this 60 hour maximum bank is in conjunction with Section 1 above). Should any employee exceed 60 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.

Nothing herein prevents an employee from wearing his/her uniform while conducting personal business during lunch time.

Time spent in changing clothes before or after a shift, is not considered hours 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 City 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 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.

- 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 and will terminate at the end of the two hour minimum, or if the call-back lasts longer than two hours the time he/she returns to his/her residence.

Any call-back lasting two hours or less shall result in a credit for two hours worked. When added to the eight hour day or 40 hour work week an employee shall end up with a net result of three hours pay (or three hours comp time 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 eight 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 5:00 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.

An employee who receives multiple calls within the allotted two hours minimum (or when applicable, four hour minimum) is not entitled to double-payment for call-backs even if the employee has returned to his/her residence. For example, if an employee receives a call-back that is completed and returns to his/her residence and then receives a second call-back within the original two hour minimum compensation window, the second call-back will result in a continuation of service commencing from the original call-back start time regardless if the call was similar or different than the original call-back.

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.

This provision replaces Section 2.0. (1)(a) of Resolution No. 8083.

- H. COURT PAY. When an employee is physically called to court, while off duty, he/she shall be credited on an hour for hour basis for the time actually spent in court. An employee shall be credited with a minimum of two (2) hours for the court appearance. Travel time shall be not considered hours worked and shall not be compensated in any manner whatsoever.

This provision replaces Section 2.G.(l)(b) of Resolution No. 8083.

- 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 Fair Labor Standards Act and will not be compensated, except as set forth below.

In recognition of the City's established practices the City shall continue to compensate employees at the rate of two (2) hours of compensation for a.m. standby duty and two (2) hours of compensation for p.m. standby duty. 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. 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):

<b>Classification Title</b>
ACCOUNTANT
ASSISTANT ENGINEER
ASSISTANT PLANNER
ASSOCIATE PLANNER
COMMUNITY SERVICES COORDINATOR
HOUSING AND CDBG ANALYST
HUMAN RESOURCES ANALYST
MANAGEMENT ANALYST
SENIOR PLANNER

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 11 – EDUCATION PROGRAM**

### **A. REIMBURSEMENT.**

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.

1. Prior to enrolling in the class, an employee desiring partial 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 the total cost of the course.

On approval by Human Resources and Finance, the employee shall then be reimbursed up to a maximum of \$2000 per fiscal year for tuition, transportation costs where appropriate, registration fees and related expenses necessary for completion of the course.

2. 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.
3. 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. An employee with a job-related (as determined by the City) degree or certificate from an accredited educational institution shall receive an additional allowance as follows:

- Associate of Arts Degree                      \$60.00 per month
- Bachelor of Arts Degree                      \$90.00 per month
- Master's or Ph.D. Degree                      \$120.00 per month

Special Certificates:

- 10 or more semester units                      \$30.00 per month
- 20 or more semester units                      \$60.00 per month

No employee may receive more than one Educational Incentive Allowance benefit at one time.

#### **ARTICLE 12 – SAFETY SHOES**

A. An employee who performs significant field work as part of his/her normal and customary job duties shall receive up to \$250.00 on per fiscal year basis depending on the job classification, through a direct purchase from a City selected vendor, for safety shoes which comply with current California Office of Safety and Health Administration (Cal/OSHA) standards, Title 8, Section 3385, as amended.

B. An employee who purchases safety shoes through this program, shall wear such safety shoes while performing work outside of an office environment, in compliance with Cal/OSHA standards, Title 8, section 3385. Any employee failing to adhere to this requirement shall be subject to disciplinary action, up to and including termination. The City Manager and/or his designee shall have discretion as to the need and necessity of the safety shoe purchase.

C. Positions receiving one pair of safety shoes per year are as follows:

- |                               |  |
|-------------------------------|--|
| Building Inspector            | Senior Building Inspector/Code Enforcement |
| Building Inspector Technician | Senior Building Inspector/Plan Checker     |
| Code Enforcement Officer      | Senior Environmental Inspector             |
| Code Enforcement Technician   | Senior Public Works Inspector              |
| Environmental Inspector       | Storekeeper                                |
| Public Works Inspector        |  |

Positions receiving one pair of safety shoes every two years are as follows:

- |                    |                |
|--------------------|----------------|
| Assistant Engineer | Senior Planner |
|--------------------|----------------|

Assistant/Associate Planner  
Plan Check Inspector

Water Quality Specialist

### **ARTICLE 13 – UNIFORM ALLOWANCE**

- A. The City shall provide a work uniform to each employee and shall provide a City-paid cleaning service for such uniforms.
- B. The City agrees to continue to provide uniform cleaning service for those bargaining unit members who currently receive it.
- C. The monetary value for such purchase, rental, and maintenance of the required clothing which is a ready substitute for personal attire (uniform) shall be reported to the California Public Employees' Retirement System (CalPERS) as compensation as required by law. The annual retirement contribution shall be based on the stated amounts for the term of the MOU listed in Article 15 – Public Employees' Retirement System. Any additional tax liabilities are borne solely by the employee.

### **ARTICLE 14 – MILEAGE**

An employee required to use a personal vehicle for City business shall be reimbursed at the rate allowed by the Internal Revenue Service.

<b>RETIREMENT</b>
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### **ARTICLE 15 – 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>
1. One Year Highest Compensation	20042
2. Military Service Credit as Public Service	21024
3. 2.5% at 55 – Full Formula	21354.4
4. Fourth Level of 1959 Survivor Benefit	21574
5. Pre-Retirement Optional Settlement 2 Death Benefit	21548

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>
1. Three Highest Years Compensation	20037
2. Military Service Credit as Public Service	21024
3. 2% at 60 – Full Formula	21353
4. Fourth Level of 1959 Survivor Benefit	21574
5. 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>
1. Three Highest Years Compensation	7522.32
2. Military Service Credit as Public Service	21024
3. 2% at 62 – Full Formula	7522.20
4. Fourth Level of 1959 Survivor Benefit	21574
5. Pre-Retirement Optional Settlement 2 Death Benefit	21548

E. CONTRIBUTIONS.

1. Employees hired before December 22, 2012, the full eight percent (8%) cost of the CalPERS member contributions shall be paid by each 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 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 16 – 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 shall be paid in full by the employee and the City shall not be obligated to pay or “pickup” any portion thereof.

## INSURANCE

### ARTICLE 17 – 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 “pickup” any such contributions.

### ARTICLE 18 – MEDICAL INSURANCE

- A. The City shall provide group medical 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 \$ 939.00
- Employee & One Dependent \$1,217.00
- Employee & 2 + Dependents \$1,390.00

##### **Retirees**

- Retiree Only \$126.00
- Retiree & One Dependent \$172.00
- Retiree & 2 + Dependents \$195.00



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

**Employees**

*For coverage effective July 1, 2018*

- Employee Only \$ 939.00
- Employee & One Dependent \$1,217.00
- Employee & 2 + Dependents \$1,390.00

**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 no dependents is entitled to a maximum monthly contribution of \$939.00 per month. If he/she has a health insurance plan which costs \$536.99 per month the employee is entitled to \$402.01 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:

- Effective July 1, 2015 \$753.00 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 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, employees not currently enrolled in the SRA program are not eligible to enroll in this program. This program is closed to new enrollees.

#### **ARTICLE 19 – DENTAL INSURANCE (Effective 01/01/2019)**

The City shall continue to provide the current dental program for 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. 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%.

Monthly

- |                             |        |
|-----------------------------|--------|
| • Employee Only             | \$3.00 |
| • Employee & 1 Dependent    | \$5.00 |
| • Employee & 2 + Dependents | \$7.50 |

- B. **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%.

Monthly

- |                             |         |
|-----------------------------|---------|
| • Employee Only             | \$10.00 |
| • Employee & 1 Dependent    | \$15.00 |
| • Employee & 2 + Dependents | \$20.00 |

- C. **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 20 – 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 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 \$2500 per month, whichever is less.

### **ARTICLE 21 – LIFE INSURANCE**

- A. The City shall provide group term life insurance (including accidental death and dismemberment) for each employee (either full-time or part-time) in the amount of \$25,000. Each employee, at his/her own expense, may purchase additional life insurance from the insurer through the City.
- B. The City shall provide group term life insurance, (including accidental death and dismemberment,) in the amount of \$1,500 for each employee's:

1. legal spouse or registered domestic partner and/or
2. children under the age of 19.

#### **ARTICLE 22 – 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 amended from time to time by the City and the third-party administrator. The City will consult with employees 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 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 23 – ADMINISTRATION**

- A. The City shall have the right to select any insurance carrier or other (including self-insurance) 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 as those in existence 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 24 – HOLIDAYS**

- A. The following dates, and such other days or portions of days as may be designated by motion of the City Council, shall be observed as paid holidays.

Holiday	Date
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
Veteran's 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 to the above, one floating holiday per fiscal year may be earned. 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 becoming eligible for the floating holiday. Regular part-time employees shall receive four and one-half hours of pay for each 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. When a holiday occurs on an off-Friday, the preceding Thursday shall be observed.
- D. An employee with a probationary or regular appointment that is less than full-time, but is half-time or more, shall earn holiday leave in correlation to the employee's regular scheduled hours during the pay period in which the holiday occurs. Such employees shall receive four and one-half hours pay for the floating holiday.
- E. Holiday Closure. The City shall close the City Hall, City Yard, and Community Center facilities to the public during the holiday period between Christmas Eve and New Year's Day. During the closure, employees will have the option to use accrued Vacation, Compensatory Time, Administrative Leave, or Floating Holiday. Employees without sufficient accrued leave time to cover the holiday closure may borrow from future vacation accrual.

The City maintains the right to determine the essential services which will still operate during this closure period.

## ARTICLE 25 – VACATION LEAVE

A. ACCRUAL. Vacation shall accrue to each full-time employee at the following rates:

<u>Years of Service</u>	<u>Vacation Hours Accrued</u>
Less than 5 years	80 hrs. vacation per year (6 2/3 hrs. per month)
5 years to 10 years	120 hrs. vacation per year (10 hrs. per month)
10 years or more	160 hrs. vacation per year (13-1/3 hrs. per month)

An employee having a probationary or regular appointment that is less than full-time, but is half-time or more, shall accrue vacation on a prorated basis, based on the employee's regular (i.e., not overtime) paid hours in each pay period.

B. ACCUMULATION. Accumulation of vacation leave in excess of that earned in two years is prohibited. All vacation leave exceeding the authorized accumulation shall be forfeited.

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

1. Each employee must take at least 40 hours of vacation each fiscal year.
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 service 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 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.
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.

1. Once each fiscal year, an employee may elect to 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.
2. Notwithstanding the above paragraph, an employee may convert up to a maximum of 80 hours of annual vacation leave into a cash payment as long as the employee has 240 hours, or more, of annual vacation leave "on the books" after the conversion.

E. VACATION PAY AT SEPARATION. Upon separation, an employee will receive compensation at the current rate of base pay for all unused earned vacation, up to and including the date of separation.

1. 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 a probation period in the classification from which the employee was promoted.
2. An employee who has not completed 12 months of continuous service shall not receive separation vacation pay for regular vacation.

F. CONTINUOUS SERVICE. For the purpose of computing years of service, an employee's continuous service shall be based on the effective date on which the employee received initial probationary appointment in the City service.

**ARTICLE 26 – SICK LEAVE**

A. ACCRUAL.

1. Each employee 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. Eligibility for Use of Sick Leave. 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 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 a 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 any period for which sick leave was requested.
4. Maternity leave. 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 shall 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 all 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. Upon written request of the employee and recommendation of 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 duties, 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 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.

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 appropriate disciplinary action be imposed against the employee.

F. ANNUAL BUYBACK PROGRAM.

1. To be eligible an employee must have:
  - a. 480 hours of accumulated sick leave as of the first pay period of July of the preceding year, and
  - b. 480 hours of accumulated sick leave remaining after the cash out.
2. An employee who wishes to participate must file a written request with his/her department head within 30 days of the end of a 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 remaining hours accrued, but not used, will remain in the employee's sick

leave bank. Payment will be based 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. Employees appointed on or after September 20, 1982, shall not be eligible for sick leave pay on termination as provided for in this section.

Employees 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.

Employees 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 27 – 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 28 – WORKERS COMPENSATION**

A. 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.

- B. 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 29 – 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 the jury 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.

### **ARTICLE 30 – OTHER LEAVES**

- A. LEAVE WITHOUT PAY. Upon written recommendation of the department head, the City Manager may authorize a leave of absence without pay for a period not to exceed 30 calendar days in a calendar year.
- 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 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 military leave shall present a copy of military orders to the department head prior to the beginning of the leave.

## **WORKING CONDITIONS**

### **ARTICLE 31 – 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 employee's paychecks directly 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 32 – 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 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 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 33 – HOURS OF WORK AND SCHEDULES**

Unless otherwise prescribed in writing by the City Manager, the work week, work shift, and work schedule for each position shall be as follows:

- A. WORK WEEK. The work week for all full-time positions shall be 40 hours.
- B. WORK SHIFT. The work shift for all full-time positions scheduled on the "9/80 Work Plan" shall be nine hours a day for eight days, and eight hours for one day for a total of 80 hours in a two-week period.
- C. 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 week days in accordance with the Alternative Work Schedule.

- D. ALTERNATIVE WORK SCHEDULES. The decision to implement any alternative work schedule, including the 9/80 Plan and the trial 4/10 Plan for the City Yard facility, is at the sole discretion of the City. The 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 or meet and consult prior to revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

Except in cases of emergency, the City shall provide two weeks notice to an employee of any changes in his/her work schedule.

### **ARTICLE 34 – 9/80 PLAN ALTERNATE WORK SCHEDULE**

- 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 9/80 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. The work period will be forty hours per week. It will consist of nine days instead of ten in a two-week pay period. Employees will work eight days for nine hours a day and one day for eight hours for a total of 80 hours in the pay period. The basic work day will increase from 8 eight to 9 nine hours a day. The standard for accounting is 80 hours in a pay period. During a pay period, the employee shall have one occasion of two consecutive days off and one occasion of three consecutive days off. The 9/80 Plan allows employees to be off an additional day during the pay period.

Days off will be consecutive and scheduled at the discretion of the department heads. Days off include every other Friday. Once days off are determined, they are fixed unless otherwise approved.

- C. Work Period for all FLSA-Exempt Employees. The work period for employees on the 9/80 who are exempt from the FLSA requirements will be the same as the pay period (Saturday of the first calendar week through Friday of the second calendar week). This schedule coincides with the current payroll reporting period.
- D. Work Period for Non-Exempt Employees. The work period for all employees who are not exempt from FLSA requirements on the 9/80 will continue to be 40 hours and a pay period will still consist of two work periods. However, the first work period will end and the second work period will begin in the middle of the fifth work day shift

in the pay period. Depending upon the employee's schedule, four or five hours will belong to the first work period and the remaining four or five hours of that day will belong to the second work period. Work periods can break on different days of the week depending upon which days the employee works. The work period break in a pay period can be as early as the middle of the first Wednesday or as late as the middle of the second Monday of the pay period. The pay period will still coincide with the current payroll reporting period.

- E. Payroll Period Report Dates – All Employees. Payroll will still be reported in accordance with our payroll calendar for all employees, including those on the 9/80 Plan.
- F. Work Hours. For employees who normally work daytime hours Monday through Friday, the following work schedules are available to serve the needs of the City.

7:00 a.m. - 5:00 p.m. 1 hour lunch  
 7:30 a.m. - 5:30 p.m. 1 hour lunch  
 8:00 a.m. - 6:00 p.m. 1 hour lunch

The day of the week the employee has off during one work period will be an eight-hour work day the next work period and vice versa. For example, if the employee is off the first Friday of a pay period, he/she will work eight hours on the second Friday of that pay period. All other days worked in that pay period will be nine-hour shifts.

The department head or his/her designee may adjust the designated start/stop schedules as seasonal and/or weather conditions indicate.

The following depicts the four different work schedule patterns within a pay period:

**Days Worked Within Pay Period**

Group	1	2	3	4	5	6	7	8	9	10
A	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs	Off
B	9 hrs	9 hrs	9 hrs	9 hrs	Off	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs
C	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs	Off	9 hrs	9 hrs	9 hrs	9 hrs
D	Off	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs

- G. 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 the Finance Department in writing.
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 call 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.
4. When an employee separates from employment, the employee will be paid for all hours worked.
5. When an employee changes to a different work schedule, it must coincide with the start of a pay period.

H. Leave Time Accruals. Benefit leave time accruals will remain the same as designated in this Memorandum of Understanding. Depending on the work day, benefit leave time off under the 9/80 Plan will be at the rate of either eight or nine hours.

I. Holidays.

1. If a holiday falls on the Friday the City is closed, the holiday will be observed on the preceding workday.
2. If a holiday falls on the employee's day off, an eight-hour day off must be taken within the same pay period as the holiday. An employee's alternate day off for the holiday must be approved by the department head.
3. If a holiday (including floating holidays) falls on the employee's nine-hour workday, an employee will be credited with nine hours. If a holiday falls on an employee's eight-hour workday, an employee will be credited with eight hours.
4. On pay periods containing holidays where employees' regularly scheduled hours need to be altered, for those employees who are subject to FLSA requirements, additional work schedule adjustments may be required for the day that breaks their two 40 hour work periods within the pay period to ensure the 40 hour work periods are maintained.
5. Holidays occurring on an employee's regular eight-hour work day are not affected by the above schedule.

J. Paid Sick Time/Vacation.

1. Employees using paid sick leave on an eight-hour day will be charged eight hours.
2. Employees using paid sick leave on a nine-hour day will be charged nine hours.



3. If the scheduled hours are greater than the sick leave balance, the difference will be covered by:
  - a. Use vacation or compensatory time.
  - b. Other Leaves
  - c. Leave without pay.
4. Vacation is charged in the same manner. Vacations occurring on eight-hour days will be charged eight hours, and those falling on nine-hour days will be charged nine hours.

K. Workers Compensation. Employees will be paid for industrial accident leave hours in accordance with their current 9/80 work schedule. An employee will return on the same 9/80 work schedule.

L. Military Leave, Jury 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 9/80 work schedule.

An employee shall not receive overtime (pay or comp time) when such leave falls on his/her day off.

M. 9/80 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 are 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, citizen input through compliments, commendations, or complaints, energy savings, and related costs or funding to the City.

### **ARTICLE 35 – 4/10 PLAN ALTERNATE WORK SCHEDULE**

Effective July 4, 2015, for employees covered under this MOU currently assigned to the City Yard facility, the City shall implement and evaluate a “4/10 Alternative Work Schedule” for a trial period of one year.

A. The intent is to determine the effectiveness and efficiency of the City Employees Association work force in providing service to the community while working an alternative work schedule that includes a 4/10 component.

- B. During this evaluation period, there will be no additional costs (direct or indirect) to the City as a result of a modified work schedule, specifically related to overtime except for call-backs for service and emergency calls and time-off accruals such as sick leave, vacation, holidays, etc. All such accruals will remain unchanged.
- C. 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
  - Employee accidents
  - Employee turnover
  - Tardiness
  - Employee morale

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.

- D. 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 department head.

- E. 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.

- F. 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.

G. 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 the Finance Department in writing.
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 call Finance immediately to make a payroll correction.

H. WORK HOURS.

The department head or his/her designee may adjust the designated start/stop schedules as seasonal and/or weather conditions indicate.

I. 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' day off, a memo listing each employee's new work schedule and days off should be signed by each employee affected and submitted to Finance (payroll) 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.

J. LEAVE TIME ACCRUALS. Benefit leave time accruals will remain the same as designated in this Memorandum of Understanding.

K. HOLIDAYS.

1. If a holiday falls on the Friday the City is closed, the holiday will be observed on the preceding workday.
2. If a holiday falls on the employee's day off, a 10-hour day off must be taken within the same pay period as the holiday. An employee's alternate day off for the holiday must be approved by the department head.
3. On pay periods containing holidays where employees' regularly scheduled hours need to be altered, for those employees who are subject to FLSA requirements, additional work schedule adjustments may be required for the day that breaks their two 40 hour work periods within the pay period to ensure the 40 hour work periods are maintained.

4. Holidays occurring on an employee's regular 10-hour workday are not affected by the above schedule.
5. When a floating holiday is taken, employees taking the holiday on a 10-hour day will be charged 10 hours.

L. 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 vacation or compensatory time.
  - b. Other leaves.
  - c. Absence without pay.
3. Vacation is charged in the same manner. Vacations occurring on 10 hour days will be charged 10 hours.

M. WORKERS COMPENSATION. Employees will be paid for industrial accident leave hours in accordance with their current 4/10 work schedule. An employee will return on the same 4/10 work schedule.

N. MILITARY LEAVE, JURY 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.

O. DEPARTMENT HEAD RESPONSIBILITY. Changes to an employee's 4/10 work schedule must be coordinated through the department head, Human Resources and Finance to ensure that changes to and from the 4/10 Plan coincide with the beginning of a pay period.

P. The decision to implement any alternative work schedule, including the 9/80 Plan and the trial 4/10 Plan for the City Yard facility, is at the sole discretion of the City. The 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 or meet and consult prior to revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

### **ARTICLE 36 – 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 work environment, poor morale, and increased potential liability to the City. “Under the influence” means the knowing use of any illegal substance, alcohol, 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 Department. The Human Resources Department 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 37 – EMERGENCY MEDICAL ATTENTION**

In case of emergency, an employee may seek immediate medical attention without having to wait for a supervisor to accompany him/her.

## **ARTICLE 38 – GRIEVANCE PROCEDURE**

- 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 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 qualified employee organizations, 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 verbal or 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 resolution at the initial or preceding step(s). However, the employee must notify the department head of the dispute in writing.
  3. Should the dispute not be resolved by the department head to the satisfaction of both parties, 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 shifts, the parties will be provided with a written

response from the City Manager. The decision of the City Manager shall be the final step in the Administrative process.

### **ARTICLE 39 – 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 E.

### **ARTICLE 40 – PERFORMANCE EVALUATION**

The parties agree that performance evaluations may not be appealed to advisory arbitration. The appeal process shall end at the City Manager level as provided in the grievance procedure contained herein.

**SIGNATURES**  
**Amended and Restated MOU adopted June 26, 2018**

FOR THE  
CITY OF BUENA PARK

FOR THE BUENA PARK TECHNICAL,  
OFFICE AND PROFESSIONALS  
ASSOCIATION

*Eddie Fenton*

\_\_\_\_\_  
Eddie Fenton  
Director of Human Resources

*Alice Burnett*

\_\_\_\_\_  
Alice Burnett  
Senior Human Resources Analyst

*Raul Berroteran*

\_\_\_\_\_  
Raul Berroteran  
Representative

*Suzanne Davis*

\_\_\_\_\_  
Suzanne Davis  
Representative

*Sarah Guerra*

\_\_\_\_\_  
Sarah Guerra  
Representative

*Norm Wray*

\_\_\_\_\_  
Norm Wray  
Representative



**EXHIBIT A – PAY SCHEDULE – EFFECTIVE JUNE 30, 2018  
TECHNICAL, OFFICE AND PROFESSIONALS ASSOCIATION**

Position	Range	Step 1			Step 2			Step 3			Step 4			Step 5			Step 6		
		Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual
Account Clerk	117	18.94	3,283	39,400	19.85	3,440	41,279	20.78	3,602	43,224	21.79	3,777	45,322	22.84	3,959	47,507	23.93	4,148	49,780
Accountant	136	29.72	5,152	61,821	31.18	5,405	64,858	32.69	5,667	68,005	34.30	5,946	71,348	35.97	6,235	74,823	37.72	6,538	78,450
Accounting Technician	125	22.91	3,972	47,660	23.99	4,157	49,889	25.12	4,354	52,249	26.36	4,569	54,828	27.64	4,791	57,494	28.97	5,021	60,247
Administrative Assistant	123	21.81	3,780	45,366	22.89	3,968	47,617	23.97	4,156	49,867	25.11	4,352	52,227	26.34	4,565	54,784	27.62	4,788	57,450
Assistant City Clerk	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329
Assistant Engineer	141	33.55	5,815	69,775	35.17	6,097	73,162	36.88	6,392	76,702	38.67	6,703	80,439	40.56	7,031	84,372	42.53	7,372	88,459
Assistant Planner	134	28.37	4,917	59,002	29.72	5,152	61,821	31.17	5,403	64,836	32.68	5,665	67,983	34.29	5,944	71,326	35.96	6,233	74,801
Associate Planner	141	33.55	5,815	69,775	35.17	6,097	73,162	36.88	6,392	76,702	38.67	6,703	80,439	40.56	7,031	84,372	42.53	7,372	88,459
Building Inspector	136	29.72	5,152	61,821	31.18	5,405	64,858	32.69	5,667	68,005	34.30	5,946	71,348	35.97	6,235	74,823	37.72	6,538	78,450
Building Inspector Technician	133	27.67	4,797	57,559	29.03	5,032	60,378	30.41	5,272	63,263	31.89	5,527	66,322	33.42	5,793	69,513	35.06	6,077	72,922
Buyer	126	23.45	4,065	48,775	24.57	4,259	51,113	25.76	4,465	53,582	26.99	4,678	56,139	28.30	4,906	58,871	29.67	5,143	61,711
Code Enforcement Officer	134	28.37	4,917	59,002	29.72	5,152	61,821	31.17	5,403	64,836	32.68	5,665	67,983	34.29	5,944	71,326	35.96	6,233	74,801
Code Enforcement Technician	121	20.81	3,607	43,290	21.81	3,780	45,366	22.85	3,961	47,529	23.96	4,154	49,846	25.10	4,350	52,206	26.33	4,564	54,762
Community Outreach Coordinator	123	21.81	3,780	45,366	22.89	3,968	47,617	23.97	4,156	49,867	25.11	4,352	52,227	26.34	4,565	54,784	27.62	4,788	57,450
Community Services Coordinator	118	19.38	3,360	40,318	20.34	3,526	42,306	21.29	3,689	44,273	22.34	3,872	46,458	23.39	4,054	48,644	24.52	4,250	51,004
Environmental Inspector	132	27.02	4,684	56,205	28.36	4,915	58,980	29.70	5,148	61,777	31.16	5,401	64,814	32.68	5,665	67,983	34.28	5,942	71,305
Executive Assistant	131	26.39	4,574	54,893	27.68	4,798	57,581	29.03	5,032	60,378	30.41	5,272	63,263	31.89	5,527	66,322	33.42	5,793	69,513
Housing and CDBG Analyst	141	33.55	5,815	69,775	35.17	6,097	73,162	36.88	6,392	76,702	38.67	6,703	80,439	40.56	7,031	84,372	42.53	7,372	88,459
Human Resources Analyst	141	33.55	5,815	69,775	35.17	6,097	73,162	36.88	6,392	76,702	38.67	6,703	80,439	40.56	7,031	84,372	42.53	7,372	88,459
Human Resources Specialist	132	27.02	4,684	56,205	28.36	4,915	58,980	29.70	5,148	61,777	31.16	5,401	64,814	32.68	5,665	67,983	34.28	5,942	71,305
Mailroom Aide	113	17.26	2,992	35,904	18.06	3,130	37,564	18.93	3,282	39,378	19.84	3,438	41,257	20.75	3,597	43,159	21.79	3,777	45,322
Management Analyst	141	33.55	5,815	69,775	35.17	6,097	73,162	36.88	6,392	76,702	38.67	6,703	80,439	40.56	7,031	84,372	42.53	7,372	88,459
Management Assistant	134	28.37	4,917	59,002	29.72	5,152	61,821	31.17	5,403	64,836	32.68	5,665	67,983	34.29	5,944	71,326	35.96	6,233	74,801
Marketing Assistant	114	17.66	3,061	36,734	18.49	3,205	38,460	19.37	3,358	40,296	20.30	3,518	42,219	21.25	3,684	44,208	22.28	3,862	46,349
Marketing Specialist	130	25.78	4,469	53,622	27.02	4,683	56,202	28.35	4,914	58,968	29.69	5,146	61,755	31.15	5,399	64,792	32.67	5,663	67,954
Office Assistant	114	17.66	3,061	36,734	18.49	3,205	38,460	19.37	3,358	40,296	20.30	3,518	42,219	21.25	3,684	44,208	22.28	3,862	46,349
Payroll Technician	125	22.91	3,972	47,660	23.99	4,157	49,889	25.12	4,354	52,249	26.36	4,569	54,828	27.64	4,791	57,494	28.97	5,021	60,247
Permit Technician	121	20.81	3,607	43,290	21.81	3,780	45,366	22.85	3,961	47,529	23.96	4,154	49,846	25.10	4,350	52,206	26.33	4,564	54,762
Public Works Inspector	136	29.72	5,152	61,821	31.18	5,405	64,858	32.69	5,667	68,005	34.30	5,946	71,348	35.97	6,235	74,823	37.72	6,538	78,450
Secretary Clerk	118	19.38	3,360	40,318	20.34	3,526	42,306	21.29	3,689	44,273	22.34	3,872	46,458	23.39	4,054	48,644	24.52	4,250	51,004
Sr. Account Clerk	122	21.31	3,693	44,317	22.35	3,873	46,480	23.40	4,055	48,665	24.53	4,252	51,026	25.71	4,456	53,473	26.96	4,673	56,073

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

**EXHIBIT A – PAY SCHEDULE – EFFECTIVE JUNE 30, 2018  
TECHNICAL, OFFICE AND PROFESSIONALS ASSOCIATION**

Position	Range	Step 1			Step 2			Step 3			Step 4			Step 5			Step 6		
		Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual
Sr. Accountant	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329
Sr. Accounting Technician	129	25.17	4,363	52,359	26.38	4,573	54,872	27.66	4,795	57,538	29.00	5,026	60,313	30.39	5,268	63,219	31.84	5,520	66,235
Sr. Administrative Assistant	126	23.45	4,065	48,775	24.57	4,259	51,113	25.76	4,465	53,582	26.99	4,678	56,139	28.30	4,906	58,871	29.67	5,143	61,711
Sr. Building Inspector/Code Enf.	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329
Sr. Building Inspector/Plan Checker	146	37.81	6,554	78,647	39.67	6,876	82,515	41.60	7,211	86,536	43.63	7,563	90,753	45.77	7,934	95,211	48.03	8,326	99,910
Sr. Community Services Coordinator	131	26.39	4,574	54,893	27.68	4,798	57,581	29.03	5,032	60,378	30.41	5,272	63,263	31.89	5,527	66,322	33.42	5,793	69,513
Sr. Engineering Technician	138	31.00	5,373	64,480	32.55	5,642	67,704	34.18	5,925	71,094	35.89	6,221	74,651	37.68	6,531	78,374	39.56	6,857	82,285
Sr. Environmental Inspector	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329
Sr. Office Assistant	116	18.51	3,209	38,504	19.37	3,358	40,296	20.31	3,520	42,241	21.26	3,686	44,229	22.29	3,864	46,371	23.34	4,046	48,556
Sr. Planner	146	37.81	6,554	78,647	39.67	6,876	82,515	41.60	7,211	86,536	43.63	7,563	90,753	45.77	7,934	95,211	48.03	8,326	99,910
Sr. Public Works Inspector	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329
Storekeeper	125	22.91	3,972	47,660	23.99	4,157	49,889	25.12	4,354	52,249	26.36	4,569	54,828	27.64	4,791	57,494	28.97	5,021	60,247
Water Quality Specialist	139	31.96	5,540	66,475	33.50	5,807	69,688	35.14	6,091	73,097	36.87	6,390	76,680	38.65	6,700	80,395	40.54	7,027	84,329

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

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

## **EXHIBIT B – COMPENSATION PLAN**

- A. PURPOSE. The purpose of this Plan is to establish a Merit system of compensation for all general employees represented by T.O.P. Association, 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, temporary, 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 appointing authority. In determining salary range and salary rates, consideration shall be given to both base 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, when it is determined 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 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 (5%) 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 to the second and to 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 for 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 step 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 7-1/2 percent or 10 percent over the current rate.
2. The probation and salary procedures for the promotional position shall follow those prescribed in the various applicable paragraphs of Section D.
3. If the promotion is to a position (class) assigned to a Salary Schedule other than the General Employees (T.O.P.) Salary Schedule, the probation and salary procedures shall follow those prescribed in the various applicable paragraphs of the Resolution for the appropriate Salary Schedule.

**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 is 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 eligibility shall be earned to receive subsequent merit salary advancements in accordance with appropriate paragraphs in Section D.
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. CHANGES 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 numbered step in the new range as the employee was receiving in the previous range. The employee's 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 a 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 (5%) percent 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 lasting longer than 30 days 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 2.20.080 of the Buena Park City Code.
  4. The City Manager must approve all such appointments upon findings which meet 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. For the purpose of computing the new salary anniversary date, it shall be 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 provisional service. This

appointment shall be 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 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 provision 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 the employee's request. The Department Head shall promptly forward the statement and the employee's along with a 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 C – 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 20% of the compliment 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 D – 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 E – 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 from a list of advisory arbitrators from the California State

Mediation and Conciliation Service (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 employee, and each party shall be responsible for expenses they incur. The maximum expense for the hearing officer borne by the employee is \$2,000. Effective July 2, 2015, the Association shall be responsible for the shared expenses for the hearing officer up to a maximum \$2,000 as described by this subparagraph (f).

(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.