

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

***CITY OF REDLANDS***

**AND THE**

**THE SAN BERNARDINO**

**PUBLIC EMPLOYEES ASSOCIATION**

**REPRESENTING THE**

**GENERAL EMPLOYEES ASSOCIATION**

**OF REDLANDS**

**JULY 1, 2015 - JUNE 30, 2017**

*Between*  
***The City of Redlands***  
*And*  
***San Bernardino Public Employees Association***  
*REPRESENTING THE*  
***General Employees Association of Redlands***

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*July 1, 2015 – June 30, 2017*

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**Article 1. TERM OF MEMORANDUM OF UNDERSTANDING**

Except where expressly stated otherwise herein, the City and Association agree that the provisions of this Memorandum of Understanding (MOU) shall become effective on July 1, 2015 and shall expire on June 30, 2017.

**Article 2. PREAMBLE**

It is the intent and purpose of this MOU to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters relating to the wages, hours, and terms and conditions of employment between the City of Redlands (hereinafter referred to as "City") and the General Employees Association represented by the San Bernardino Public Employees Association (hereinafter referred to as "Association").

**Article 3. RECOGNITION**

A unit employee shall be defined as an employee of the City and assigned to the GEAR unit by the City Manager in accordance with City policies and procedures.

**Article 4. MANAGEMENT RIGHTS**

The authority of the City includes:

- The exclusive right to determine the mission of its constituent departments, commissions and boards;
- Set standards of service;
- Determine the procedures and standards of selection for employment and promotion;
- Direct its employees;
- Take disciplinary action;
- Relieve its employees from duty because of lack of work or for other legitimate reasons;
- Maintain the efficiency of work;
- Maintain the efficiency of governmental operations;
- Determine the methods, means and personnel by which government operations are to be conducted;
- Determine the content of job classifications;
- Take all necessary actions to carry out its mission in emergencies;
- Exercise complete control and discretion over its organization and the technology of performing its work, provided, however, that the exercise and retention of such rights does not preclude employees or their representatives from meeting and conferring over effects on matters within the scope of representation.

**Article 5. SALARIES**

There shall be a 3% base salary increase effective the first payroll period commencing on or after July 1, 2015. There shall be a 3% base salary increase effective the first payroll period commencing on or after July 1, 2016.

**Article 6. RETIREMENT**

A.

1. Effective the first payroll period commencing on or after City Council adoption of the 2012-2015 MOU and adoption by the Council and implementation of necessary CalPERS resolution(s)

addressing the amount of employer funding of “classic” normal member employee CalPERS contributions, all “classic” unit members employed prior to March 11, 2010 shall individually fund 3.0% of compensation earnable (42.87% of the 7% of compensation earnable, which is presently the maximum “classic” normal member employee CALPERS contribution) as and for the unit member’s normal employee PERS. “Classic” unit members hired on or after March 11, 2010 shall continue to individually fund 5% of compensation earnable as and for the individual member’s normal employee PERS contribution. (The term “classic” member is defined in the Public Employee’s Pension Reform Act of 2013-“PEPRA.”)

2. Effective the first payroll period commencing on or after July 1, 2014, all “classic” unit members including those employed prior to March 11, 2010 shall fund 5% of compensation earnable (71.4% of the 7% of compensation earnable) as and for the individual member’s normal employee PERS contribution.
3. Effective the first payroll commencing on or after January 1, 2015, all “classic” unit members including those first employed on and after March 11, 2010, shall personally fund 100% of the 7% of compensation earnable as and for the individual member’s normal employee PERS contribution.

All “classic” member normal contributions required to be paid by the member, whether paid by the employer or the member, shall be credited to the member’s CalPERS account.

The City shall adopt the necessary resolution(s) so that individual member contributions made by the employee may be excluded from taxable income pursuant to Section 414(h)(2) of the United States Internal Revenue Code.

Whether as authorized by Government Code § 20692, 20636(c)(4) or any other statutory or legal basis, the City shall not report to CalPERS as any type of compensation, any portion of the normal employee PERS contributions required by PERS which are funded by the employee.

To the extent that this 2012-2015 MOU mandates payment by the City of a part of the above “classic” unit member’s normal employee PERS contribution, the City shall make said payments on a pre-tax basis to the extent authorized to do so by the IRS and the Franchise Tax Board.

B.

1. AB 340, the Public Employee’s Pension Reform Act of 2013 – “PEPRA” (signed by the Governor on 09/07/12,) shall in its entirety be given full force and effect as it may from time to time exist, during and after the term of the 2012-15 MOU, as described below. Any provision in the 2012-15 MOU which contradicts any provision of AB 340 shall be deemed null and void, with the contrary AB 340 provision(s) being given full force and effect. Therefore, no provision of AB 340 shall be deemed to impair any provision of the 2012-15 MOU or any MOU, Agreement, Rule or Regulation predating the 2012-15 MOU.
2. Unit employees who are “new members” as defined in the above AB 340, shall individually pay an initial Member CALPERS contribution rate of 50% of the normal cost rate (as defined and calculated by CalPERS) for the Defined Benefit Plan in which said newly hired member is enrolled, rounded to the nearest quarter of 1%, or the current contribution rate of similarly situated employees, whichever is greater. (AB 340 – Government Code section 7522.30)

3. Unit employees who are “new members,” as defined in the above AB 340, on and after January 1, 2013, shall be enrolled in the AB 340 retirement plan of 2%@62 (Government Code section 7522.20(a), with final pensionable compensation (as defined for new members in Government Code § 7522.34) being determined by reference to the highest average annual pensionable compensation earned during a period of 36 consecutive months. (Government Code § 7522.32(a).)

C. The City shall continue to include in this contract with CalPERS, the following provisions:

HIGHEST SINGLE YEAR

SURVIVOR CONTINUANCE

2% @ 55 RETIREMENT FORMULA

**Article 7. LONGEVITY PAY**

- A. Employees hired prior to March 11, 2010, with twenty (20) years cumulative service with the City shall advance to the Step “F” on the salary resolution effective with the beginning of the pay period beginning closest to the first day of their 21<sup>st</sup> year of service.
- B. Employees hired on or after March 11, 2010 shall not be eligible for “F” step longevity pay.
- C. In the event that an employee is not at the “E” step when he/she is eligible for the “F” step, at the completion of twenty (20) years of service, the employee will advance to the next step in the salary range, and continue to advance based on merit until the employee reaches the “F” step.

**Article 8. OVERTIME**

- A. Overtime pay shall be earned at time and one-half for all hours. The employee may elect to earn compensatory time off, at one and one-half time, in lieu of overtime pay. Overtime must be paid at the time it is worked or accrued as compensatory time. Accrued compensatory time will not be paid off in lump sum except at termination and only for those hours on the official payroll records.
- B. Paid leave time; which encompasses holiday, vacation, sick, and compensatory time; shall not be considered hours worked for the computation of overtime.
- C. Any employee who works overtime in excess of three and one-half (3½) hours, provided that employee has worked eight (8) hours in addition to the three and one-half (3½) hours, will be entitled to have a meal at the expense of the City or be entitled to go home and eat, which will be at the discretion of the supervisor in charge.

**Article 9. WORKING OUT OF CLASSIFICATION PAY**

- A. Whenever the needs of the City require an employee to temporarily perform the duties of a higher classification than that in which the employee is currently employed, said employee shall be entitled to receive out of classification pay for the period of time that the employee works out of classification. Out of classification pay shall be at a flat rate of five-percent (5%) of base salary.
- B. In order to receive out of classification pay the following provisions must occur:

1. The name of the employee who is absent must be noted on the employee's timesheet prior to out of classification pay being authorized.
  2. A vacancy or absence must exist for out of classification pay to be paid.
  3. The employee receiving out of classification pay must perform essentially all of the functions of the higher classification in order to receive compensation.
  4. The employee shall meet the minimum qualifications for the higher classification in order to be eligible for out of classification pay.
  5. The employee shall have completed five (5) consecutive full work days in the higher classification and shall then be eligible for out of classification pay commencing with the sixth (6th) consecutive day working out of classification and continuing for all consecutive days worked thereafter
- C. Working out of classification pay for special assignments will only be authorized upon recommendation to the City Manager by the Department Head and will require a Personnel Action Form with supporting documentation justifying the special assignment.

**Article 10. SPECIAL ASSIGNMENT PAY**

Employees performing in a capacity beyond the normal scope of their duties, and with increased and direct responsibility and personal liability for City operations shall be eligible for Special Assignment Pay. Special Assignment Pay shall be at a flat rate not to exceed ten percent (10%) of base salary. Special Assignment Pay will only be authorized upon Department Head recommendation, Human Resources Director concurrence and City Manager approval.

**Article 11. CALL BACK PAY**

- A. Call back time will be reimbursed based on a minimum two (2) hour block at time and one-half, with the exception that employees will be reimbursed based on a minimum three-hour block at time and one-half if the call back is between the hours of 12:00 a.m. and 7:00 a.m. Any employee who is unable to respond within thirty (30) minutes may be eliminated from the standby rotation.
- B. An employee working a continuous call back of at least four (4) hours that ends within eight (8) hours of the employee's regular job starting time is not required to report to duty at the employee's regularly scheduled time. When an employee has worked at least two (2) hours during the eight (8) hours prior to the commencement of the regular work schedule, the employee shall automatically report to duty on the employee's regularly scheduled shift immediately commencing ten (10) hours after the end of the call-back assignment.
- C. Where the working of call back time results in the employee starting his/her regularly scheduled shift after the regularly scheduled shift commences, the missed hours of work shall not be deducted from the employee's hours worked total for the weekly work period.

**Article 12. STAND-BY PAY**

- A. Employees in the General Employees unit of representation assigned to standby duty shall receive one (1) hour of pay at straight time for standby duty on a week day and four (4) hours of straight time pay for standby duty on a regularly scheduled day off, weekend day or holiday.
- B. In order to qualify for standby pay employees must:
  1. Be required to be near a telephone at all times or carry a pager;

2. Be able to report to the worksite within thirty (30) minutes; and,
3. Not consume alcoholic beverages or any other debilitating drug while on standby.

**Article 13. SCHEDULED RECALL TO WORK**

The City agrees that when employees of the Municipal Utilities and Engineering Department are recalled or scheduled to return to work for water system installation or a maintenance project between the hours of 12 midnight and 4:00 a.m., said employees shall receive time and one-half for all hours worked. Employees performing in this capacity shall automatically report to duty on their regularly scheduled shift immediately after a ten (10) hour rest period has occurred from the ending time of the scheduled or recall work assignment.

**Article 14. SHIFT DIFFERENTIAL**

The City agrees to provide a five-percent (5%) shift differential to those employees who work one-half of their regularly scheduled shifts after 7:00 p.m., not to include overtime, special assignments, emergency hours, etc. worked after 7:00 p.m. The shift differential shall apply to the full regularly scheduled shift.

**Article 15. UNIFORM ALLOWANCE**

A. All employees described in Article 15 A. shall in lieu of the uniform allowance, be provided uniform rental and laundering services at City expense and a boot/footwear allowance in the amount of one hundred fifty dollars (\$150.00) per year. Upon termination of employment, employees whose uniforms were provided to them will be required to return the uniforms to the City. It is a requirement that employees wear the designated uniform and appropriate footwear to work daily. Classifications covered by this provision are:

|                                           |                                                 |
|-------------------------------------------|-------------------------------------------------|
| Asphalt Worker                            | Sr. Equipment Operator                          |
| Building Maintenance Supervisor           | Sr. Grounds Maintenance Worker I/II             |
| Building Maintenance Worker               | Sr. Grounds Maintenance Worker I/II             |
| Cemetery Caretaker II                     | Sr. Solid Waste Truck Driver                    |
| Cemetery Crew Leader                      | Sr. Street Maintenance Worker                   |
| Concrete Worker                           | Sr. Tree Trimmer                                |
| Cross Connection Control Inspector        | Sr. Water Distribution Operator                 |
| Customer Service Field Technician         | Sr. Water Treatment Operator                    |
| Electrical and Instrumentation Technician | Storekeeper                                     |
| Electrician                               | Street Sweeper Operator                         |
| Equipment Operator OIT/I/II               | Traffic Signal Technician I/II                  |
| Field Services Coordinator                | Tree Trimmer I/II                               |
| Grounds Maintenance Worker I/II           | Wastewater Collection System Supervisor         |
| Line Maintenance Worker I/II              | Waste Management Coordinator                    |
| Maintenance Worker                        | Water Distribution Crew Leader                  |
| Mechanic I/II                             | Water Distribution Operator                     |
| Operations Superintendent                 | Water Distribution Operator Foreperson III/IV/V |
| Park Maintenance Mechanic                 | Water Distribution Supervisor                   |

Plant Mechanic I/II  
Production Pump Maintenance Operator  
Sign & Paint Worker  
Solid Waste Collector  
Solid Waste Route Supervisor  
Solid Waste Truck Driver  
Sr. Asphalt Worker  
Sr. Building Maintenance Worker  
Sr. Concrete Worker

Water Meter Reader  
Water Production Maintenance Supervisor  
Water Production Maintenance Foreperson  
Water Production Maintenance Worker  
Water Production Operations Supervisor  
Water Quality Control Officer  
Water Quality Technician I/II  
Water Treatment Operator II/III/IV  
Welder

- B. Non-uniformed employees in this unit on payroll as of June 1 of each year and at the time the check is issued shall receive an annual two hundred dollars (\$200.00) bonus in lieu of the uniform allowance. This bonus will not be reported to PERS as compensation.
- C. The parties recognize that their best efforts have been made to list the appropriate job classifications and uniform entitlement. In the event an error has been made and a classification has been misidentified, that classification will be added to the above appropriate category.

**Article 16. RIDESHARING**

- A. All employees are eligible for participation in the City's ridesharing program. Participation in the program is voluntary and shall be in full compliance of Redlands Ridesharing Program Policy. Approved participants shall receive either one dollar sixty five cents (\$1.65) for each rideshare day OR fifteen (15) minutes of accrued compensatory time off for each rideshare day. The cash bonus shall be paid in November of each year. Ridesharing shall be reported on individual employee timesheets.
- B. The program shall be monitored by the Program Coordinator. Participants in violation of the Ridesharing Policy, including falsification of reporting, shall be permanently dismissed from the program and subject to disciplinary action.

**Article 17. TUITION REIMBURSEMENT**

- A. Employees shall be reimbursed up to the dollar amount charged for the same number of units per term by the University of California, Riverside. An employee shall not receive reimbursement in excess of two thousand Dollars (\$2,000) in any one fiscal year. The difference between the City's maximum obligation during any fiscal year and the amount of any actual reimbursement received by the employee during that fiscal year shall not be carried over or be available to use by the employee in any subsequent fiscal year.
- B. The course must be satisfactorily completed with a minimum grade of "C" or equivalent.

**Article 18. BILINGUAL PAY**

Employees are eligible for bilingual pay in accordance with the City's Bilingual Pay Program, and upon approval by the Department Head and Human Resources/Risk Management Director. Authorized employees shall receive additional compensation in the amount of sixty five dollars (\$65) per month.

**Article 19. DEATH OF EMPLOYEE**

- A. The eligible dependents of deceased employees shall be entitled to benefits as follows:
- B. Sick leave accruals, lifetime medical insurance and other applicable benefits shall be calculated and/or compensated according to the eligibility requirements stated in the current MOU.
- C. In the event the deceased employee qualified for a service retirement (i.e. age 50 and with a minimum of five (5) years of service with the City), the City shall calculate and/or compensate benefits in the same manner as an employee service retirement.

**Article 20. HEALTH INSURANCE**

- A. Only for members hired by the City prior to March 11, 2010, the health insurance rates in effect on January 1, 2012 are the "flat dollar" City contribution amount. The City shall fund employee and eligible dependent medical insurance in an amount not to exceed the January 1, 2012 PERS Choice health insurance rates (the highest of either the Los Angeles area or other Southern California area as those terms are defined by CalPERS.)

| 2012 PERS CHOICE RATES                |                                                  |                                                   |
|---------------------------------------|--------------------------------------------------|---------------------------------------------------|
| COVERAGE LEVEL                        | PREMIUM                                          | PREMIUM CONTRIBUTION:                             |
|                                       | CONTRIBUTION: PERS<br>CHOICE LOS ANGELES<br>AREA | PERS CHOICE OTHER<br>SOUTHERN CALIFORNIA<br>AREAS |
| Employee Only:                        | \$505.63                                         | \$526.19                                          |
| Employee Plus One Dependent:          | \$1,011.26                                       | \$1,052.38                                        |
| Employee plus Two or more Dependents: | \$1,314.64                                       | \$1,368.09                                        |

- B. Only for members hired by the City prior to March 11, 2010, effective January 1, 2014, and each January 1 thereafter, the maximum City funding of employee and eligible dependent health insurance shall be increased in an amount equal to 50% of the dollar amount of the increase in PERS Choice health insurance rates. The initial January 1, 2014 increase, if any, shall represent the differential between the 2013 and 2014 rates.
- C. For employees hired *on or after March 11, 2010*, the City will contribute a maximum monthly health insurance contribution of three hundred and ninety seven dollars (\$397.00) per month pursuant to Resolution No. 4572, adopted by the City Council on September 5, 1989. Additionally, the City will contribute on a monthly basis two hundred and three dollars (\$203.00) as a Flexible Spending Account ("FSA") to be utilized by the employee to purchase/contribute toward health insurance premiums. Any amount of the FSA not utilized by the employee to purchase health insurance will be placed in an individual Health Retirement Account ("HRA").
- D. The City agrees to provide a stipend of three hundred and fifty dollars (\$350), on a monthly basis, for those employees with alternative medical coverage who opt for the stipend in lieu of the medical insurance benefit.
- E. Upon service retirement and completion of twenty (20) cumulative years of service with the City, and in lieu of any sick leave buyback, an employee hired prior to March 11, 2010, may elect fully

paid medical insurance (excludes vision coverage) for the employee and eligible dependents, under the City's medical insurance program. Employees electing the fully paid medical insurance may also select benefit D or F, set forth in Article 26, Sick Leave, upon service retirement. Employees hired on or after March 11,2010 are not eligible for this benefit.

- F. During the term of the MOU the parties agree to "reopen" the MOU to discuss alternatives to the current CalPERS health insurance plans.

**Article 21. DENTAL INSURANCE**

The City agrees to pay the full monthly premium for dental insurance under the Principal Financial dental plan or its equivalent for each employee in the unit and all eligible dependents.

**Article 22. VISION CARE**

The City agrees to reimburse each employee in the unit up to two hundred twenty five dollars (\$225) every fiscal year for the purchase of frames and lenses or contact lenses and the cost of eye examinations for the employee and/or his/her dependent.

**Article 23. LIFE INSURANCE**

The City shall contribute the monthly premium for term life insurance in the amount of twenty-five thousand dollars (\$25,000) for all employees in the unit.

**Article 24. WORKERS' COMPENSATION/SDI**

- A. The City agrees to provide City paid State Disability Insurance coverage to all employees in the unit.
- B. Sick leave or compensatory time may be used to supplement a Workers' Compensation or State Disability Insurance check, not to exceed the employee's regular rate of pay. Prior to use of accrued sick leave or compensatory time for this purpose, the State Disability Insurance check stub must be submitted to Payroll.

**Article 25. VACATION**

- A. The vacation accrual for employees in the unit shall be as follows:

| YEARS OF SERVICE | ACCRUAL RATE – HOURS |
|------------------|----------------------|
| 0 – 5            | 80                   |
| 6 – 7            | 120                  |
| 8 – 9            | 128                  |
| 10 – 11          | 136                  |
| 12 – 13          | 144                  |
| 14 – 15          | 152                  |
| 16 – 20          | 160                  |
| 21               | 168                  |
| 22               | 176                  |
| 23               | 184                  |
| 24               | 192                  |
| 25+              | 200                  |

- B. The maximum vacation accrual shall be three (3) years. In November of each calendar year all vacation hours in excess of three (3) years accrual will be paid off at the employee's current hourly rate.

**Article 26. SICK LEAVE**

- A. **ACCRUAL:** Sick leave shall be accrued on an hourly basis at the rate of eight (8) hours per calendar month of service.
- B. **USE:** Employees may use up to half of their annual sick leave accrual, forty-eight (48) hours, to care for ill family members.
- C. **BUY BACK:** In November of each calendar year, each employee in the unit may elect to be paid at his/her current hourly rate for each sick leave day accumulated during the preceding calendar year in excess of six (6) sick leave days. A total of one (1) year's accumulation, ninety-six (96) hours, must be on the books prior to any compensation being paid. Employees in the unit may also choose to accumulate all sick leave days, from calendar year to calendar year, to an unlimited amount.
- D. **AT SEPARATION OF SERVICE:** Upon separation of service with the City, employees with ten (10) or more years of continuous service will be eligible to cash in unused sick leave at the following formula:

| YEARS OF SERVICE | PERCENT |
|------------------|---------|
| 10 – 15          | 25 %    |
| 16 – 20          | 35 %    |
| 21+              | 50 %    |

Employees electing this option shall be responsible for any and all future medical insurance premiums.

- E. **UPON SERVICE RETIREMENT:** In lieu of the benefit D and upon service retirement under the PERS retirement plan, employees in the unit may elect to have all remaining sick leave accrued at the time of retirement converted to cash value at their final rate of pay, and apply such cash value to applicable premiums payable under the City's medical insurance program for the employee and the employee's eligible dependents until the cash value is exhausted. In the event that the employee dies prior to exhaustion of the cash value of said benefits, the remaining cash value may be applied toward the premiums of covered dependents until exhausted, subject to the conditions and limitations of the applicable insurance policy.
- F. **CONVERSION TO SERVICE CREDIT:** In lieu of benefits D and E cited above, employees in the unit may elect to have all remaining sick leave accrued at the time of service retirement converted to PERS service credit.

**Article 27. BEREAVEMENT LEAVE**

In the event of a death in the immediate family, an eligible employee will be compensated with four (4) days paid leave. In addition, eligible employees may be allowed to use accrued sick leave with full pay not to exceed three (3) days. Immediate family shall be defined as the following relatives to either the employee or spouse: spouse, child (including foster child or ward of the court), parent, grandparent, brother, sister, niece, nephew, step-children, and grandchildren. The definition of immediate family will

also include the aunt and uncle of the employee only. Bereavement leave may also be used for the significant other of the employee provided the employee shows proof of cohabitation.

**Article 28. LEAVE OF ABSENCE WITHOUT PAY**

If an employee takes more than five (5) accumulated days of leave without pay in a calendar year, commencing at the beginning of the sixth (6th) day of leave without pay and any day of leave without pay thereafter during the calendar year, sick leave and vacation accruals will be adjusted proportionately to eliminate benefit accruals for any day an employee is on leave without pay status.

**Article 29. MILITARY LEAVE**

Military leave shall be granted in accordance with the provisions of State and Federal law. The department head may request copies of the employee's official military orders.

**Article 30. HOLIDAYS**

A. The holidays which will be honored for employees in the unit will include the following, along with any additional day as designated by action of the City Council:

| HOLIDAY                       | DAY OBSERVED                  |
|-------------------------------|-------------------------------|
| New Year's Day                | January 1                     |
| Martin Luther King Day        | Third Monday in January       |
| President's Day               | Third Monday in February      |
| Memorial Day                  | Last Monday in May            |
| Independence Day              | July 4                        |
| Labor Day                     | First Monday in September     |
| Columbus Day                  | Second Monday in October      |
| Veteran's Day                 | November 11                   |
| Thanksgiving Day              | Third Thursday in November    |
| Friday after Thanksgiving Day | Friday after Thanksgiving Day |
| Christmas Day                 | December 25                   |

- B. If the holiday falls on Saturday, Friday shall be designated as the holiday and if the holiday falls on Sunday, Monday shall be designated as the holiday. Christmas Eve Day shall be observed as a holiday when Christmas Day falls on Tuesday, Wednesday, Thursday, or Friday.
- C. If a scheduled holiday falls on an employee's regular day off, the employee shall be compensated for one day of holiday compensation at straight time. Employees should not be scheduled to work both the designated holiday and the actual holiday.
- D. Holiday pay shall be compensated in accordance with the employee's standard work schedule.
- E. Employees hired prior to March 11, 2010 are entitled to receive:
1. Two (2) Floating Holidays per calendar year
  2. Twenty (20) Hours of Additional Floating Holidays per calendar year
- F. Employees in the unit shall not be allowed to carry floating holidays over from one calendar year to the next. Holidays not taken by December 31<sup>st</sup> of any given year will be forfeited.

G. The A.K. Smiley Public Library will be closed on the Saturday following Thanksgiving Day.

**Article 31.     *COMPENSATORY TIME OFF***

Compensatory Time Off (CTO) shall accrue at the rate of one and one-half (1-1/2) hours for each overtime hour worked in accordance with the Fair Labor Standards Act. CTO shall not accumulate in excess of one hundred twenty (120) hours at any given time. Use of compensatory time-off earned shall be granted so that it does not unduly disrupt the operations of the City. Terminating employees shall be compensated for accrued compensatory hours.

**Article 32.     *TIME OFF FOR ASSOCIATION REPS***

The Association may designate up to twelve (12) representatives to attend Association meetings on City time, provided that no designated employee shall be released for more than two (2) hours per month. The four (4) members of the Executive Board may be released up to three (3) additional hours per month. The President of the Redlands SBPEA chapter shall be released for up to two (2) hours per week to attend to Association business. This time shall be in addition to meetings with the City Manager, Human Resources or City Council members. The time must be scheduled in advance and the supervisor must be notified.

**Article 33.     *MEAL PERIODS***

Employees shall be entitled to a meal period which shall not be less than thirty (30) minutes or greater than sixty (60) minutes. Every effort will be made to schedule the meal period during the middle of a shift, when possible.

**Article 34.     *REST PERIODS***

- A. The City agrees to the following: Employees shall be entitled to two (2) daily rest periods ten (10) to fifteen (15) minutes in duration which insofar as practical shall be in the middle of each work period. The rest periods shall be considered as time worked. Employees required to work beyond their regular tour of duty shall be granted a ten (10) minute rest period for each two (2) hours of work.
- B. The Association understands and agrees to the following. With regard to break periods, the following scenarios should not occur:
  - 1. Combining two daily breaks into one 20-30 minute break.
  - 2. "Banking" breaks from day to day.
  - 3. "Saving" break time in order to extend lunch periods or shorten the workday.
  - 4. Payment of compensatory time off or overtime for "unused" breaks.

**Article 35.     *CATASTROPHIC LEAVE***

Employees are eligible for catastrophic leave in accordance with the City's Catastrophic Leave Policy.

**Article 36.     *LEAVE TIME REPORTING***

Leave time may be used and reported in increments of fifteen (15) minutes.

**Article 37. DRIVER'S LICENSE PHYSICAL EXAMS**

The City will pay for the required physical examination for employees required by their job classification to maintain Class A or Class B driver's licenses. Time spent participating in the required physical examination will be considered as time worked.

**Article 38. EMPLOYMENT EXAMINATION PROCEDURES**

The examination procedure for all City jobs will be as established by the City and Association.

**Article 39. PROBATION**

- A. Employees newly hired on or after March 11, 2010 shall serve a probationary period of twelve (12) months.
- B. Employees who are promoted shall serve a probationary period of six (6) months.
- C. Probationary periods may be extended as set forth in the City's Personnel Rules and Regulations.

**Article 40. REVIEW/EVALUATION DATE**

For those employees hired after July 1, 1990, the "review/evaluation date" shall be the day of the month in which the employee completes the probationary period. When an employee receives a promotion, after July 1, 1990, the new review/evaluation date shall be the day of the month in which the employee completes the probationary period in the new classification. When a salary increase is granted, it shall be effective on the beginning of the pay period falling closest to the day of the month the employee was hired or promoted.

**Article 41. PERFORMANCE EVALUATIONS**

In cases where a performance evaluation has not been received by an employee within 30 days of the eligibility date, the employee should contact the supervisor, who must complete and file the evaluation within ten (10) working days.

**Article 42. WORKWEEK /STANDARD TOUR OF DUTY**

The standard tour of duty represents the time that an employee is regularly scheduled to work. The department head shall establish the actual number of hours which comprise the standard tour of duty for each position. Any proposed change shall be communicated to the employees and Association at least two (2) weeks prior to the proposed change being implemented unless mutually agreed upon between the employee and supervisor. If requested by the Association, the parties shall expeditiously meet and confer regarding such change.

**Article 43. PROMOTIONAL POSITIONS**

- A. The City may seek only promotional candidates to fill available positions. In this case, distribution of job announcements shall be limited to internal sources. Promotional candidates shall follow the procedures identified in the City's Personnel Rules and Regulations. Employees appointed to promotional positions shall complete a probationary period in accordance with the City's Personnel Rules and Regulations.
- B. Employees appointed to a promotional position shall receive the nearest highest monthly salary which is at least five percent (5%) higher than the employee's previous base salary, but in no case more than the top step of the new salary range.

#### **Article 44. NO STRIKE PROVISION**

It is understood and agreed that the service performed by City employees included in this MOU are essential to the public's health, safety, and welfare. Therefore, the Association agrees that it will not authorize, instigate, aid, condone, or engage in any strike, work stoppage, or other action of the City. In the event of a violation of this section, the Association agrees to take affirmative steps with the employees concerned to bring about an immediate resumption of normal work. Should there be a violation of this section, there shall be no discussion or negotiations regarding the difference or dispute during the existence of such violation or before normal work has been resumed. The City reserves the right to terminate any employee who instigates or engages in any strike or work stoppage which interrupts or interferes with the operation of the City.

#### **Article 45. DIRECT DEPOSIT**

Direct deposit of employee paychecks will be available to employees in this unit.

#### **Article 46. PERSONNEL FILE**

- A. No material which can reasonably be construed, interpreted, or acknowledged to be derogatory shall be placed in an employee's personnel file unless the employee has been allowed to read such material and respond to it, in writing, which response will also be placed in the personnel file.
- B. Any employee, upon request, shall have access to his/her personnel file, and shall have the right of reproduction, at cost, of his/her personnel file in full or in part. No portion of an employee's personnel file shall be transmitted to anyone other than the City Manager, Human Resources Director, Department Head, Risk Management Administrators, or by Court subpoena. The employee is to be notified at the time of the request that the information has been transmitted and to whom it was sent.

#### **Article 47. COPY OF MOU TO EACH EMPLOYEE**

The City will provide each employee in the unit with access to this MOU within sixty (60) days of execution.

#### **Article 48. RULES, REGULATIONS AND RESOLUTIONS**

The City agrees to review annually with the Association major changes in the Personnel Rules and Regulations and to make available copies of the rules and regulations to all employees. Salary resolutions shall be furnished to the San Bernardino Public Employees Association and all representatives.

#### **Article 49. DISCIPLINARY PROCEDURE**

- A. The Investigatory Interview Process

Prior to any investigatory interview or consultation between an employee and the Department Head or City Manager, that could reasonably be construed to result in disciplinary action against the employee, the employee shall be given notice of the interview or consultation as soon as reasonably practical, and shall be advised of his or her right to representation under this section; and upon request shall be afforded an opportunity to contact and consult privately with a representative of the Association. If requested, the employee may have an Association representative present during any such investigatory interview or consultation, and, to the extent practicable, such interviews or

consultations shall be conducted during an employee's working hours. Only those persons reasonably necessary to the conduct of the interview shall be present.

The employee or the City may elect to record any such investigatory interview or consultation, unless the parties mutually agree not to record such interview or consultation; however, in the event the City elects to record such an interview or consultation, it shall upon request provide the employee with a copy of said recording. The cost of providing a copy of the recording to the employee shall be borne by the employee.

## B. Disciplinary Procedures

No non-probationary employee shall be disciplined without cause. A promotional probationary employee who is subject to discipline as defined by City rules and regulations, shall retain the right to challenge the action in the same manner as a non-promotional employee who has successfully completed the probationary testing period. Rejection from a probationary promotional position is not "disciplinary action" as described herein, and is not subject to appeal or any other challenge. Disciplinary action shall be defined to include: oral warnings, written reprimands, suspensions, demotions (non-probationary), reduction in pay and discharge. Oral and written reprimands may be initiated at the supervisor/Division Manager level. Disciplinary action more serious than a written reprimand must be initiated at the Department Head level.

### 1. Notice of Proposed Action

Whenever an employee is to be discharged, suspended (for more than five (5) working days) demoted (non-probationary), or reduced in step, for disciplinary purposes, written notice of at least five(5)<sup>1</sup> days of the proposed disciplinary action shall be given before such action is to be taken and must include:

- a. Notice of proposed action;
- b. Reasons for proposed action;
- c. A copy of charges stating specific incidents or specific courses of conduct, e.g. as evidenced by work performance evaluations, and a copy of the written materials upon which the decision to take proposed disciplinary action is based; and
- d. A notice to the employee of the right to respond in writing or orally within the five (5) day period.

In the case of a suspension of five (5) working days or less, the foregoing procedures shall be afforded the employee either before or during the suspension, or within a reasonable time thereafter.

### 2. Limitations and Exceptions

- a. Oral notice is insufficient as full notice to an employee and may be given only as the initial notice in extraordinary circumstances which call for immediate action.
- b. Prior written notice is required in each case, unless provided otherwise herein, regardless of seriousness unless extraordinary circumstances are involved.

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<sup>1</sup> Unless specifically noted to be "working days," any reference to days is calendar days.

- c. Employees may be suspended without prior written notice in extraordinary circumstances when it is essential to avert harm to the public, other employees, or to avert serious disruption of governmental business. The appointing authority may schedule an employee for vacation or holiday leave as the circumstances may warrant. Extraordinary circumstances include but are not limited to situations involving misappropriation of public funds or property; working while under the influence of alcohol or intoxicating drugs; open insubordination; commission of a crime involving moral turpitude punishable by imprisonment for six (6) months or more; and disruption of City business through willful misconduct (altercations, etc.)
- d. Oral notice is insufficient as full notice for proposed disciplinary action. In extraordinary circumstances when immediate suspension, demotion, removal, or reduction in step is warranted, initial notice may be given orally. The employee should be told when the initial action is taken what the reasons for the actions are and, in addition, the employee will have an opportunity to respond in writing and/or orally to those charges. The written charges in the case of an immediate disciplinary action must be prepared as soon as possible and normally within a day or two (2) of the initial oral notice.

### 3. Employee's Response to Proposed Discipline

- a. An employee receiving a Notice of Proposed action shall have the right to respond to the Department Head. An employee's opportunity to respond to the Department Head is not intended to be an adversarial hearing. An employee has the right to have a representative of his/her own choosing at the meeting. The employee shall not be accorded the opportunity to cross-examine a department's witnesses, nor to present a formal case in opposition to the proposed discipline. However, the limited nature of this response does not obviate the Department Head's responsibility to initiate further investigation if the employee's version of the facts raises doubts as to the accuracy of the Department Head's information leading to the discipline proposal. An employee may elect not to respond, thereby waiving any further pre-disciplinary response.
- b. The Department Head will evaluate the proposed discipline in light of the employee's response, if any. Within ten (10) days of the employee's response, or deadline for response, a decision will be transmitted in writing to the employee. Service of the decision will be in person or by mail.

### 4. City Manager Level Appeal

- a. Any permanent employee shall have the right to appeal any termination, suspension, reduction in salary, or non-probationary demotion. The appeal process shall not be applicable to those positions which may be deemed exempt or to probationary employees. The appeal process shall not be applicable to verbal and written reprimands, probationary demotions, performance evaluations and denial of performance increases. An employee desiring to appeal the Department Head's decision shall have ten (10) days after receipt of the response to file an appeal. The employee's request for appeal must be addressed to the City Manager and received in the City Manager's office so that same is date stamped by the City Manager's office within the ten (10) day period.

- b. If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the Department Head shall be considered conclusive and shall take effect as prescribed. If within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the City Manager, an appeal meeting shall be scheduled.
- c. The meeting with the City Manager shall be conducted in the same manner as the Response to Proposed Discipline set forth in paragraph 2(B) above.
- d. The City Manager will evaluate the discipline in light of the employee's response, if any. Within ten (10) days of the employee's response a decision will be transmitted in writing to the employee. Service of the decision will be in person or by mail.

## 5. Advisory Arbitration

- a. An employee desiring to appeal the City Manager's decision shall have ten (10) days after receipt of the response to file an appeal. The employee's request for appeal must be addressed to the City Manager and received in the City Manager's office so that same is date stamped by the City Manager's office within the ten (10) day period.
- b. If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the City Manager shall be considered conclusive and shall take effect as prescribed. If within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the City Manager, an appeal hearing shall be established as follows:
  - i. The California State Mediation and Conciliation Service shall be requested to submit a list of seven (7) persons qualified to act as hearing officers to the City and the employee. Within ten (10) days following receipt of the list of hearing officers, the parties shall confer to select the hearing officer. The parties shall alternately strike one (1) name from the list of hearing officers (the right to strike the first name to be determined by lot) until one (1) name remains, and that person shall be the hearing officer.
  - ii. Where practicable, the date for a hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the City Manager. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.
  - iii. All hearings shall be private provided, however, that the hearing officer shall, at the request of the employee, open the hearing to the public.
  - iv. Subpoenas and subpoenas duces tecum pertaining to a hearing shall be issued at the request of either party, not less than seven (7) days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.
  - v. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious

affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. 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. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.

- vi. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.
- vii. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
  - 1. The party imposing discipline shall be permitted to make an opening statement;
  - 2. The appealing party shall then be permitted to make an opening statement;
  - 3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
  - 4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
  - 5. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case;
  - 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- i. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after conducting the hearing. His/her decision shall set forth which charges, if any,

are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.

- ii. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee. He/she may not recommend discipline more stringent than that issued by the City Manager.
- iii. The hearing officer's opinion and recommendation shall be filed with the City Council, with a copy sent to the charged employee, and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.
- iv. Within sixty (60) days of the receipt of the hearing officer's findings, recommendation, and transcript, the City Council shall adopt, amend, modify or reject the recommended findings, conclusions, and/or opinions of the hearing officer. Prior to making a decision which modifies or rejects the recommendation of the hearing officer, the City Council shall order and read the transcript of the hearing. Prior to making a decision which supports the hearing officer, the City Council may order and read the transcript, at its option. The City Council shall not conduct a de novo hearing. The City Council may, at its option, allow limited oral arguments and/or may request and review written statements from either side. The decision of the City Council shall be final and conclusive. Copies of the City Council's decision, including the hearing officer's recommendation(s), shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Council.
- v. Each party shall equally bear the cost and fees of the hearing officer, the cost of facilities, the court reporter and transcripts. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process shall not apply to mutual settlements by the parties which result in a hearing officer fee.
- vi. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Council, the time of such suspension, demotion or dismissal shall be effective from the first day after such delivery of said decision or shall relate back to and be effective as of the date the employee was disciplined pending hearing before and decision by the City Council, whichever is applicable. If discipline imposed resulted in loss of pay, and the decision results in reduction or elimination of loss of pay, the pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate.
- vii. The provisions of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this Section.

## **Article 50.     *GRIEVANCE PROCEDURE***

### **A. Definition**

A “grievance” is a formal, written allegation by a grievant that he/she has been adversely affected by an existing violation, misinterpretation or misapplication of the specific provisions of the Memorandum of Understanding, provisions of the Personnel Rules and Regulations, and/or written City Policy. Other matters for which a special method of review is provided by law, ordinance, resolution, or by administrative regulations and procedures of the City, are not within the scope of this procedure. This procedure is not to be used in lieu of the Disciplinary Appeal Procedure.

### **B. Procedure**

1. Every effort shall be made to resolve a grievance through discussion between the employee and his/her immediate supervisor. It is the spirit and intent of this procedure that all grievances are settled quickly and fairly without subsequent discrimination against employees who may seek to adjust a grievance. Every effort should be made to find an acceptable solution at the lowest level of supervision. Within fifteen (15) days<sup>2</sup> after a grievant knew, or by reasonable diligence should have known, of the condition upon which a grievance may be based, the grievant shall attempt to resolve it by an informal conference with the grievant’s immediate supervisor. A supervisor shall render a verbal decision within seven (7) days of the conclusion of the informal conference.
2. If the problem cannot be resolved between the employee and the supervisor, the employee may, within seven (7) days from the date of receiving the answer from his/her supervisor, file a written grievance and request a meeting with the Division Manager, if one exists, in order to discuss the grievance. The written grievance shall contain the following information:
  - a. Name of grievant and job title;
  - b. Department/Section;
  - c. Clear and concise statement of the nature of the grievance including the circumstances and dates involved;
  - d. The specific provision(s) of the MOU, City Policy or Personnel rules alleged to have been violated;
  - e. Requested remedy;
  - f. Name of the grievant’s Labor Representative, if any; and
  - g. Date and signature of the grievant or Labor Representative.
3. The Division Manager shall render a decision and comments in writing and return them to the grievant within ten (10) days after receiving the written grievance.

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<sup>2</sup> Days refer to calendar days.

4. If the Division Manager and employee cannot reach a solution to the grievance (or if a Division Manager does not exist), the employee may, within seven (7) days from the date of receiving the answer from the Division Manager, request, in writing, a meeting with the Department Head.
5. The Department Head shall render his/her decision in writing within fifteen (15) days of receiving the appeal. If the Department Head and employee are unable to arrive at a satisfactory solution, the employee may, within ten (10) days from the date of the decision by the Department Head, submit a written appeal to the Human Resources Director.
6. The City Manager shall review the grievance and respond to the employee within twenty (20) days of receiving the appeal. The response shall be in writing.
7. An employee desiring to appeal the City Manager's decision shall have ten (10) days after receipt of the response to file an appeal. The employee's request for appeal must be addressed to the Human Resources Director and received in the Human Resources office so that same is date stamped by the Human Resources office within the ten (10) day period.
8. If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the grievance shall be considered conclusive as set forth in the City Manager's decision and shall take effect as prescribed. If within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Human Resources Director, an appeal hearing shall be established as follows:
  - a. The California State Mediation and Conciliation Service shall be requested to submit a list of seven (7) persons qualified to act as hearing officers to the City and the employee. Within ten (10) days following receipt of the list of hearing officers, the parties shall confer to select the hearing officer. The parties shall alternately strike one (1) name from the list of hearing officers (the right to strike the first name to be determined by lot) until one (1) name remains, and that person shall be the hearing officer.
  - b. Where practicable, the date for a hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the Human Resources Director. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.
  - c. All hearings shall be private provided, however, that the hearing officer shall, at the request of the grievant, open the hearing to the public.
  - d. Subpoenas and subpoenas duces tecum pertaining to a hearing shall be issued at the request of either party, not less than seven (7) days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.
  - e. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. 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. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.

- f. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the grievant does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.
- g. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
  - i. The grievant shall be permitted to make an opening statement;
  - ii. The City shall then be permitted to make an opening statement;
  - iii. The grievant shall produce the evidence on his/her part; the grievant bears the burden of proof and burden of producing evidence;
  - iv. The City may then open its defense and offer its evidence in support thereof; the City bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
  - v. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case;
  - vi. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- h. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after conducting the hearing. The opinion shall set forth findings of fact and conclusions.
- i. The hearing officer may recommend sustaining or rejecting any or all of the grievance.
- j. The hearing officer's opinion and recommendation shall be filed with the Human Resources Director, with a copy sent to the grievant, and shall set forth his/her findings and recommendations.

- k. Within sixty (60) days of the receipt of the hearing officer's findings recommendation, and transcript, the City Council shall adopt, amend, modify or reject the recommended findings, conclusions, and/or opinions of the hearing officer. Prior to making a decision which modifies or rejects the recommendation of the hearing officer, the City Council shall order and read the transcript of the hearing. Prior to making a decision which supports the hearing officer, the City Council may order and read the transcript, at its option. The City Council shall not conduct a de novo hearing. The City Council may, at its option, allow limited oral arguments and/or may request and review written statements from either side. The decision of the City Council shall be final and conclusive. Copies of the City Council's decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the grievant's personnel file.
  - l. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer, including the court reporter and transcripts. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process shall not apply to mutual settlements by the parties which result in an arbitration fee.
  - m. The provisions of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this Section.
- 9. If the time limits for employees' appeals at any step should elapse, the grievance shall be considered withdrawn. Time limits may be extended by mutual consent. If the City fails to respond within the prescribed time limits, the grievance will be deemed to have been denied and the employee may go to the next step. If the City Manager fails to respond within the prescribed time limit, the grievance will be deemed to have been denied and the employee will be deemed to have exhausted his/her administrative remedy.
  - 10. The employee may request the assistance of another person of his/her own choosing in preparing and presenting his/her grievance at any level of review. In the event the employee desires the presence of a representative who is an employee of the City, he/she shall make such request through the supervisor and the supervisor shall make the necessary arrangements for the employee representative to be present.
  - 11. The employee and/or his/her representative may use a reasonable amount of work time as determined by the appropriate supervisor or Department Head in presenting the grievance. However, no employee shall absent himself/herself without first being excused by his/her supervisor.
  - 12. No employee shall be required to be represented by an employee organization in processing a grievance.
  - 13. Employees shall be assured freedom from reprisal for using the grievance procedures by both the City and the employee organization.
  - 14. The settlement terms of a grievance which is processed by an employee individually or by a recognized employee organization shall not conflict with the express provisions of a

Memorandum of Understanding between the City and the formally recognized employee organization for such unit.

15. A group grievance may be filed when one (1) set of circumstances or occurrences affects more than one (1) employee in the same manner or to the same extent. The group may file one (1) document which all members of the group have read and signed. Members of the group shall be limited to those who have signed the grievance. The resolution of a group grievance may not be consistent among all employees in the group grievance due to differences in the circumstances or occurrences that brought about the grievance.
16. A group grievance affecting all members of an employee organization may be brought by the employee organization itself. In such case the procedure shall be commenced directly at the City Manager level within fifteen (15) days after authorized representatives of the employee organization knew, or by reasonable diligence should have known, of the condition giving rise to the grievance and shall be subject to all applicable time limitations and the provisions set forth above.

#### **Article 51. DEMOTION/NON-DISCIPLINARY**

Regular employees who are demoted due to layoff or other non-disciplinary reasons will be required to serve a new probationary period in the lower classification, provided they have not held regular status in the lower classification previously. While serving this new probationary period, the employee will retain due process rights and cannot be disciplined or terminated from City service without due process.

#### **Article 52. LAYOFF PROCEDURE**

- A. Should the City Manager determine reductions in force to be necessary due to lack of work or for financial reasons, he/she may initiate Layoffs. Classifications to be affected and the number of employees included will be determined by the City.
- B. In determining the order of Layoffs, a combination of factors shall be considered, including but not limited to: qualifications, productivity, general performance, seniority with the City of Redlands, seniority in job classification, and needs of the City. Variations from the order of Layoffs and recall from Layoff may occur when the City deems such variations appropriate under the circumstances.
- C. The factors the City, in its discretion, may use to determine include but are not limited to the following:
  1. An employee's last four performance evaluations, if any;
  2. Any history of employee commendations, awards, etc.;
  3. Any history of employee disciplinary action;
  4. Attendance record, including tardiness and unexcused absences;
  5. Safety record, including personal injury and damage to city property;
  6. Probationary and temporary employees shall be laid off before a regular employee in the same classification;
  7. Between two regular appointees in the same classification with the same skills, abilities, qualifications, merit and/or record, the employee with lesser seniority in the classification may be laid off first;

8. Between two regular appointees in the same classification the employee with lesser skills, abilities, qualifications, merit and\or record than may be laid off first, without regard to seniority;
9. Memoranda of Understanding ("MOU") between the City and affected bargaining units.

#### **D. BUMPING**

1. "Bumping" means the displacement of an employee from his/her position by an employee in a higher classification who formerly held the same position, or a position in the same job family, within that employee's department.
2. Where two or more employees are laid off from the same position, the employee with the greatest seniority in that classification shall have the first opportunity to bump as set forth below.
3. A laid-off employee shall be entitled to bump an employee in the same position previously held by the laid off employee, or a position in the same job family (set forth in the applicable MOU), in accordance with the criteria specified in paragraph D of this Rule, in that employee's department. Alternatively, an employee may "bump" into a position in a different department which he/she held within the prior five (5) years. The laid off employee must be able to perform the essential job functions of the former position and possess the minimum qualifications of the position as specified by the job classification specification. A laid-off employee shall not bump an employee with greater skills, abilities, qualifications, merit and/or record. Employees must utilize the option that places them in the highest available position.
4. The City will notify laid-off employees of any positions available for bumping. Bumping shall only be available in the laid-off employee's Department unless a position was held in a different department which he/she held within the prior five years. Following such notification, the employee must notify the Human Resources Director in writing of his/her intent to exercise the bumping rights within seven (7) calendar days, and the position and classification in to which he/she intends to bump. Failure to provide such notification will be deemed a waiver of bumping rights by the employee.
5. Where there is more than one employee in a position available for bumping, the factors in paragraph D of this Rule, or the conditions set forth in an approved Memorandum of Understanding, will be used to determine which employee, if any, will be bumped.
6. The process will be repeated at the next classification level where an employee bumps in and creates an overage in that classification.
7. Any displaced employee shall be considered as laid-off for the same reason as the person who displaced them and shall in the same manner be eligible to displace another employee based on the criteria specified in paragraph D of this Rule.

#### **E. REINSTATEMENT FROM LAYOFF**

1. The names of probationary and regular employees who have been laid off shall be placed on appropriate reemployment lists. Such names shall remain thereon for a period of one year unless such persons are sooner reemployed.
2. When a reemployment list is to be used to fill vacancies, the Human Resources Director shall certify from such lists the number of names equal to the number of vacancies. An employee

who is reemployed shall receive credit for former service for purposes of seniority, benefit compensation, and salary advancement.

3. Employees who, following layoff from a position or layoff from City employment may be reinstated upon the recommendation of the Department Head and with the approval of the Human Resources Director, to the position from which they were laid off based on their qualifications, availability, and the needs of the organization pursuant to this paragraph.

#### **Article 53. AGENCY SHOP**

Agency shop shall be implemented in the General Unit only after certification of a secret ballot election by mail, conducted by the State Mediation and Conciliation Service (SMCS), in which a simple majority of those voting elect to implement an agency shop. Such election shall be conducted in accordance with procedures established by the SMCS.

If such election is certified, this provision shall become effective the first day of the month following thirty (30) days after certification.

Under the provisions of SB 739, Chapter 901, of the Statutes of 2000, all current employees and all employees who are hired after this Memorandum of Understanding as approved by the City Council, and who are in a job classification within the SBPEA representation unit covered by this Memorandum of Understanding, shall within thirty (30) working days from mailing of notice of implementation of this Article to employee in the Bargaining Unit, become members of SBPEA or pay a service fee.

Each fiscal year, SBPEA shall inform the City in writing of the membership dues per month and the service fee per month. Payment of dues or service fee shall be through payroll deduction to SBPEA. The requirement to pay dues or a service fee shall not apply to employees not represented by SBPEA. Changes in membership fees will take effect within thirty (30) days of written notification.

Every employee required to pay a service fee shall annually receive written notice from SBPEA of:

- A. The amount of the service fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;
- B. The basis for the calculation of the service fee; and
- C. The procedure for appealing all or any part of the service fee.

Such written notice shall be sent/distributed to the employee subject to the service fee either:

- A. At least thirty (30) days prior to collection of the service fee, after which SBPEA shall place those fees subject to objection in escrow pursuant to 8 California Code of Regulations §32995; or
- B. Concurrent with the initial service fee collection, provided however, that all service fees so noticed shall be held in escrow in total until all objections are identified. Thereafter, only the service fees for service fee objectors shall be held in escrow, pursuant to 8 California Code of Regulations §32995.

Prior to the City withholding service fees, SBPEA shall implement a Service Fee Appeal Procedure in accordance with 8 California Code of Regulations §32994 which provides a reasonably prompt

opportunity for those employees subject to the service fee to challenge the fee amount before an impartial decision maker.

Dues/Service Fees withheld by the City shall be transmitted to the SBPEA Officer designated in writing by SBPEA as the person authorized to receive such funds at the address specified.

The parties agree that the obligations herein are a condition of continued employment for employees in positions represented by SBPEA ("unit members"). The parties further agree that the failure of any unit member to remain a member in good standing of SBPEA or to pay the service fee during the term of this Agreement shall constitute, generally, just and reasonable cause for termination.

The City shall not be obligated to put into effect any new, changed or discontinued deduction until a SBPEA membership card is submitted to the City's Finance Department in sufficient time to permit normal processing of the change or deduction.

No unit member shall be required to join SBPEA or to make a service fee payment if the unit member is an actual verified member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting employee organizations; this exception shall not be granted unless and until such unit member has verified the specific circumstances with SBPEA by filing a letter from the local head of the religion, body or sect. Employees verified to be conscientious objectors must arrange with SBPEA to satisfy his/her obligation by donating the equivalent amount to a non-labor, non-religion charitable fund, tax-exempt under Section 501(c)(3) of the Internal Revenue Code (IRC), chosen by the employee from the United Way, the American Cancer Society or the March of Dimes. SBPEA shall be responsible for determination under this paragraph. Employees opting not to join SBPEA for the reasons previously stated are responsible for making donations through means other than payroll deduction. Government Code §3502.5 states that proof of the payments (to charities) shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

SBPEA shall be fully responsible for expending funds received under this Article consistent with all legal requirements for expenditures of employee dues that are applicable to public sector labor organizations.

Whenever a unit member is delinquent in the payment of dues or fees, SBPEA shall give the unit member written notice thereof and fifteen (15) days to cure the delinquency; a copy of said notice shall be forwarded to the City's Human Resources Department. In the event the unit member remains delinquent for a period of sixty (60) days, SBPEA shall request in writing that the City initiate termination proceedings. The termination proceedings shall be governed by applicable City Personnel Rules and MOU and are specifically excluded from the Grievance Procedure.

The City shall not deduct monies specifically earmarked for a Political Action Committee or other political activities.

SBPEA shall keep an adequate itemized record of its financial transactions and shall make annually to the City, and upon request, to the employees who are members of SBPEA within sixty (60) days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and operating statement certified as to accuracy by the President and Treasurer or corresponding Principle Officer or by a Certified Public Accountant. A copy of financial reports required under or referred to in the Labor-Management Disclosure Act of 1959 or Government Code Section 3546.5 shall satisfy this requirement.

This organizational security arrangement shall be null and void if rescinded by a vote of employees in the unit pursuant to Government Code Section 3502.5(d).

SBPEA shall defend, indemnify and hold harmless the City and its officers and employees from any claim, loss, liability, cause of action or administrative proceeding arising out of the operation of this Article. Upon commencement of such legal action, administrative proceedings or claim, SBPEA shall have the right to decide and determine whether any claim, administrative proceeding, liability, suit or judgment made or brought against the City or its officers and employees because of any application of this Article shall not be compromised, resisted, defended, tried or appealed. Any such decision on the part of SBPEA shall not diminish SBPEA's defense and/or indemnification obligations under this Agreement.

The City, immediately upon receipt of notice of such claim, proceeding or legal action, shall inform SBPEA of such action, provide SBPEA with all information, documents and assistance necessary for SBPEA defense or settlement of such action, and fully cooperate with SBPEA in providing all necessary employee witnesses and assistance necessary for said defense. The cost of any such assistance shall be paid by SBPEA.

SBPEA, upon its compromise or settlement of such action or matter, shall immediately pay the parties to such action all sums due under such settlement or compromise. SBPEA, upon final order and judgment of a court or of competent jurisdiction awarding damages or costs to any employee, shall pay all sums owing under such order or judgment.

The provisions of this Article relating to agency shop shall become null and void during the period of any violation of SBPEA of the no-strike provisions of this MOU. Agency shop will continue as long as SBPEA is the recognized bargaining organization, subject to Government Code 3502.5 (d).

#### **Article 54. UNIT MODIFICATION**

It is understood that this MOU shall constitute a bar to any petition or request for decertification of the Association as the formally recognized employee organization in the General Employees unit of representation at any time prior to the expiration date of this MOU.

In addition, no petitions for unit modification of the General Employees unit will be accepted by the City without the express agreement of the Association.

The provisions of this Article shall not be applicable where precluded by law. The Association, its successors and assigns, shall indemnify, defend and hold harmless, the City, including its agents and employees, against any claims, suit or actions made or brought against the City, including its agents and employees, for any expenses, losses or damages incurred by the City, including its agents and employees, on account of the provisions of this article.

#### **Article 55. COMMUNICATIONS**

The City and the Association shall work together in the interest of maintaining, and improving efficiency in all municipal operations and conservation of materials, supplies, and equipment, and for the improvement in quality of workmanship and service to the public.

The City and the Association consider themselves mutually responsible to improve communications between management and employees and will use their best endeavors in establishing and maintaining effective communication channels.

**Article 56.     *USE OF BULLETIN BOARDS***

The City agrees that SBPEA may utilize bulletin board space in designated areas upon mutual agreement with the City. SBPEA will provide bulletin boards. The City agrees to allow the use of inter-departmental mail for distribution of SBPEA materials to SBPEA representatives only.

**Article 57.     *PREVAILING BENEFITS***

All benefits, privileges, and working conditions enjoyed by the employees at the present time, which are not included in this agreement, shall remain in full force, unchanged and unaffected in any manner, during the term of this agreement unless changed by mutual consent.

**Article 58.     *EXTENSION OF MOU***

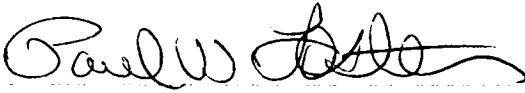
If a successor MOU is not negotiated by June 30, 2017, this MOU shall remain in force until a successor MOU is negotiated or the impasse process for a successor MOU has been concluded.

**Article 59.     *SAVINGS CLAUSE***

If any provision of this MOU, or the application of any provision, should be rendered invalid by court or legislative action, the remaining portions of this Agreement shall remain in full force and effect.

Article 60. SIGNATURES

CITY OF REDLANDS

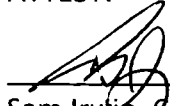
x 

PAUL FOSTER, MAYOR

DATE

4/21/15

ATTEST:

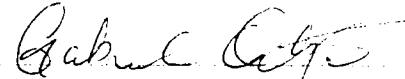


Sam Irwin, City Clerk

SBPEA

REPRESENTING THE

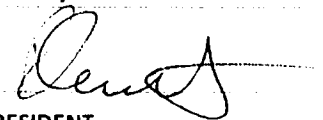
GENERAL EMPLOYEES ASSOCIATION OF REDLANDS

x 

SBPEA/ TEAMSTERS REPRESENTATIVE

4-21-15

DATE

x 

PRESIDENT

4/21/15

DATE

x 

VICE PRESIDENT

4-21-15

DATE