

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF MENIFEE

and

MENIFEE CITY EMPLOYEES ASSOCIATION

(Mid-Management Employees Unit)

July 1, 2019 to June 30, 2022

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ARTICLE 1

MEMORANDUM OF UNDERSTANDING

1.1 Parties to Memorandum of Understanding

This Memorandum of Understanding (“MOU”) is made and entered into by and between the City of Menifee, a Municipal Corporation (“City”), and the Menifee City Employees’ Association (“Association” or “MCEA”).

1.2 Governing Statute

This MOU is entered into pursuant to the Meyers-Milias-Brown Act (“MMBA”), Government Code Section 3500 *et seq.*

1.3 Term

This MOU shall remain in full force and effect from July 1, 2019 through June 30, 2022. This MOU is a three-year agreement with no reopeners except as stated herein or otherwise by mutual agreement. A reopener shall be initiated if the executive directors receive an increase in executive leave during the period of this agreement. If there is a change in state or federal law after the ratification and adoption of this MOU, which results in a direct and irreconcilable conflict with any specific term of this MOU, at the request of either party, the City and the Association shall negotiate over the effected specific term.

ARTICLE 2

RECOGNITION AND DESCRIPTION OF BARGAINING UNIT

2.1 Recognition

The City recognizes the Menifee City Employees Association as the exclusive representative of the Mid-Management Employees Unit in accordance with the September 14, 2017, Certification of Representative by the Public Employment Relations Board (“PERB”).

2.2 Description of Bargaining Unit

The description of the bargaining unit (“Unit”) is contained in Appendix A attached to this MOU, and incorporated herein by reference. Appendix A is a copy of PERB’s Certification of

Representative in Case No. LA-RR-1273-M. Unit members include the following represented classifications:

Assistant City Engineer
Building/Safety Manager
Code Enforcement Manager
Construction Manager
Financial Services Manager
Planning Manager
Principal Engineer
Public Works Manager

2.3 Members on Leave of Absence

Bargaining unit members on an authorized leave of absence shall remain members of the bargaining unit during such leave of absence.

2.4 Proposed Changes

The City and the Association agree to attempt to resolve any proposed changes to the description of the bargaining unit before requesting PERB to intervene in such issues.

ARTICLE 3

PURPOSE

3.1 Purpose

It is the purpose of this MOU to promote and provide for a harmonious relations, cooperation, and understanding between the City and the employees covered herein, to provide an orderly and equitable means of resolving any misunderstandings or differences which may arise under this “MOU”, and to set forth the understanding and agreement of the parties reached as a result of good faith negotiations.

ARTICLE 4
NON-DISCRIMINATION

4.1 Protection of Rights

The parties mutually recognize and agree to fully protect the rights of all employees to join and participate in the activities of the Association, and to have the Association represent them in their employment relations with the City. It is further agreed that nothing herein shall prohibit an employee from representing himself/herself individually or appearing on his/her own behalf with the City. No employee shall be intimidated, coerced, restrained, or discriminated against because of the exercise of these rights.

4.2 Equal Protection of Rights

The provisions of this MOU shall be applied equally to all employees, and no person shall be benefited or discriminated against in any manner based on a protected characteristic which is inconsistent with the standards set forth in federal and California anti-discrimination statutes or with any Ordinance, Resolution, or Personnel Rule or Regulation of the City. Alleged violations of this Section 4.2 are not grievable under the MOU's Grievance Procedure ("Article 14"). An employee may file a formal complaint internally with Human Resources and pursue alleged discrimination through procedures established by California or federal statutes and regulations.

ARTICLE 5
EMPLOYEE ORGANIZATIONAL RIGHTS
AND RESPONSIBILITIES

5.1 Agency Shop

5.1.1 City and Association have agreed to an agency shop arrangement that requires all employees in the bargaining unit, either to join Association as a full dues paying member or to become a non-member and pay no dues. The amounts of full Association dues or agency fees shall be determined and collected by Association in accordance with law.

5.1.2 Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting

public employee organizations, shall not be required to join or financially support Association as a condition of employment. However, in lieu of periodic dues, initiation fees, or agency fees, the employee is required to pay a sum equal to the dues, initiation fees, or agency fees to a non-religious, non-labor charitable organization exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. section 501(c)(3). Acceptable charitable organizations are the American Red Cross, the American Cancer Society, the United Way, or the American Heart Association. Proof of the payment shall be made on a monthly basis to the City's Human Resources Department, as a condition of continued exemption from the requirement of financial support to Association. The City will provide a form for this purpose.

5.2 Dues and Benefit Deductions Program

5.2.1 Association dues or agency fees shall be deducted from each employee's regular payroll check commencing with the first payroll check that includes the first (1st) of the month following employment.

5.2.2 During the term of this MOU, upon receipt of an executed voluntary written authorization, the City shall deduct Association dues, agency fees and benefit program premiums from the pay of employees represented by the Association. The form for this purpose shall be provided by the City. The amounts to be deducted for Association dues and agency fees shall be certified to the City by the designated Association official. The deductions shall be forwarded to the designated Association official within ten (10) calendar days of deduction.

5.2.3 The Association hereby agrees to indemnify and hold the City harmless for any loss or damages, claims, or causes of action, arising from the operation of this provision of the MOU.

5.3 Maintenance of Membership

5.3.1 Subject to applicable law, all regular, full-time unit employees who, on the effective date of this Agreement are members of the Association in good standing, and

all employees who thereafter become members, shall maintain their membership with the Association in good standing during the term of this Agreement. However, employees shall have the right to resign their membership during the month of December of any year. Unit employees may exercise their rights to resign by notice in writing to the Association during this period.

5.4 Representational Time-Off

5.4.1 Pursuant to relevant Government Code Sections, the City shall allow an Association employee representatives four (4) hours of time off per fiscal year without loss of compensation or other benefits while formally meeting and conferring with representatives of the City on matters within the scope of representation as defined in the Government Code, or as may be required under Article 5.6, or Article 14, Grievance Procedure.

5.5 Bulletin Boards

5.5.1 A reasonable number of bulletin boards will be provided by City in a non-public location upon which the Association may post notices of official Association business which may include recreational and social affairs, notices of meetings, benefit programs, trips, elections, appointments, and results of elections, bulletins of employee rights, notices of City Council actions, notices of employer/employee-relations updates, and reports of grievance and arbitration matters, provided that any notice must be on official Association-identified paper and a copy sent to the Human Resources Manager prior to posting. Each item to be posted shall have a remove- by-date, except for those items designated by the Association for permanent posting. No Department shall arbitrarily remove said posting without consent of the Association (except for dated material). In any event, no posting shall contain any vulgar, profane or malicious material or derogatory statement about any City employee or elected official, and no campaign information shall be posted except for the internal Association elections. The posting of

any other classes of notices at City workstations or premises is prohibited without the prior permission of the City Manager or the Human Resources Department.

5.6 Association Access to New Employees

5.6.1 The City shall designate the appropriate new employee(s) orientation meeting where one Association employee member may meet with new Association represented employee(s) for up to thirty (30) minutes to provide information to the new employee(s).

5.6.2 Pursuant to AB 119, the City agrees to provide no less than 10-days' notice in advance of any new employee orientations and provide the Association mandatory access to the orientation(s). Orientation refers to any onboarding process, whether in person, online or through other means. Access shall be determined by the Association, which could mean representational attendance or correspondence..

5.6.3 The City retains the exclusive right to have one meeting for the purposes of this section in cases where multiple employees have been hired.

5.7 Representational Information

5.7.1 The City shall provide the Association with the following information:

5.7.2 The City agrees, pursuant to AB 119, to provide the Association with the name, job title, department, work location, and work telephone number of newly hired employees within 30-days of the date of hire. The City also agrees to provide the Association with the name, job title, department, work location, work, home and personal

cellular telephone numbers, personal email addresses and home address of all bargaining unit employees every 120 days.

5.7.3 For new hires, the information covered by this section shall be provided to Association within three (3) workdays of a new employee's start date.

5.7.4 **Investigations**

5.7.4.1 An employee required to attend an investigatory interview with the employee's supervisor(s) is entitled to Association representation where the employee has a reasonable basis to believe that he or she may be disciplined as a result from the meeting. The employee must request Association representation. The right to Association representation generally does not apply to an investigatory meeting concerning solely another employee's conduct where the employee questioned at the meeting is merely a witness to the incident or has possible knowledge of the incident. The right to Association representation does not apply in coaching and mentoring sessions, or where the employee is given work performance direction, assistance or guidance from his/her supervisors.

ARTICLE 6

CITY MANAGEMENT RIGHTS

6.1 Management Rights

6.1.1 The City reserves, retains, and is vested with all rights to manage the City. The constitutional, statutory, or inherent rights, powers, authority, and functions shall remain exclusively vested with the City pursuant to Government Code Section 3500 *et seq.* These rights include but are not limited to the following:

6.1.1.1 Manage the City.

6.1.1.2 Determine the necessity, organization, and standards to implement any service or activity conducted by the City.

6.1.1.3 Recruit, select, hire, evaluate, promote, and discipline.

6.1.1.4 Determine and/or change the City facilities, methods, technology, equipment, and apparatus.

6.1.1.5 Determine and/or change the size and composition of the City work force and assign work to employees.

6.1.1.6 Determine the issues of public policy and the overall mission of the City.

6.1.1.7 Maintain order and efficiency in City facilities and operations.

6.1.1.8 Establish and promulgate and/or modify rules and regulations, policies and procedures related to safety and health in the City, and to require compliance therewith.

6.1.1.9 In the case of an emergency (act of God, war, or riot), suspend the provisions of this Agreement.

6.1.1.10 All rights, powers, authority, and functions of management, whether heretofore or hereinafter exercised, shall remain vested exclusively with the City.

ARTICLE 7

AMENDMENTS TO PERSONNEL RULES AND REGULATIONS

7.1 Amendments

It is understood and agreed that there exists within the City, in written form, Personnel Rules & Regulations. Except as specifically modified by this MOU, these Rules and Regulations, and any subsequent amendments thereto, shall be in full force and effect during the term of this MOU. Before any new or subsequent amendments to the City's Personnel Rules & Regulations directly affecting wages, hours, and terms and conditions of employment are implemented, the City shall meet and confer with Association regarding the changes in accordance with Government Code section 3500, *et seq.* Nothing provided herein shall prevent the City from implementing new

or modified Personnel Rules and Regulations during the term of MOU, provided it has met and conferred with Association as required by law.

7.2 Electronic Posting

The City's Personnel Rules & Regulations are posted on Human Resources link on the City of Menifee webpage. These Personnel Rules & Regulations address the following general categories which are not covered in the MOU:

7.2.1 Personnel system, Classification plan and selection process, appointments, changes to positions, general employment matters, donated leave for catastrophic illness or injury, and workers compensation.

ARTICLE 8

PEACEFUL PERFORMANCE OF CITY SERVICES

8.1 No strikes or Concerted Activities

For the life of the MOU, the Association, its officers, and/or members agree that they will not cause, condone, or participate in any concerted activity which affects the performance of their assigned duties and responsibilities. This shall include the withholding of services or other interference with City operations, including compliance with the request of other employees and/or labor organizations to engage in said activities.

8.2 Violations

The City may take whatever action is deemed appropriate provided it does not violate any employee's rights under applicable statutes.

8.3 Prompt Disavowal by Association

In the event of any concerted activity, the President or authorized representative of the Association shall, as soon as practicable, publicly disavow any such conduct and request the employee(s) to return to work and attempt to bring about prompt resumption of normal City operations. The Association shall notify the City shortly thereafter as to the measures taken to comply with these provisions.

ARTICLE 9
SALARIES AND COMPENSATION

9.1 Class and Compensation Study

The City has adopted and implemented the KOFF & Assoc. Study effective to July 1, 2017. Further, employees in the unit are entitled to merit salary increases in accordance with City Personnel Rules & Regulation, Section 5.9. However, merit increases are based solely upon job performance; they are not automatic; and there is no annual entitlement to them. Employees are eligible for a merit increase each year based upon the evaluation of their performance through Step 6, at which time they reach the top of their range. In order to receive a merit increase, an employee must receive at least a rating of “meets expectation” or above. Any such increase will be applied retroactively to the employee’s recent salary anniversary date.

9.2 Cost of Living

9.2.1 Effective July 1, 2019, all employees in unit represented by Association shall receive a cost of living base salary increase of four percent (4%).

9.2.2 Effective July 1, 2020, all employees in unit represented by Association shall receive a cost of living base salary increase of three percent (3%).

9.2.3 Effective July 1, 2021, all employees in unit represented by Association shall receive a cost of living base salary increase of **the lower of:** a.) three percent (3%) or b.) the Riverside-San Bernardino-Ontario CPI-W (All Urban Wage Earners and Clerical Workers) from March 2020 to March 2021, which shall not be less than zero percent (0%) if the CPI comparison is negative.

9.3 Executive Leave

9.3.1 Mid-Management employees are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA).

9.3.2 As a FLSA-exempt employee of the City, effective July 1, 2017, mid-management employees shall be granted sixty (60) hours of Executive leave each fiscal year.

9.3.3 FLSA-exempt employees must schedule and receive approval for use of Executive leave in accordance with Department policies.

9.3.4 Executive leave may be used for any reason.

9.3.5 Executive leave must be used in the fiscal year granted and shall not be carried into the next fiscal year.

9.3.6 In the event of termination/separation of employment, employees will receive payment for any unused Executive leave.

9.4 Bilingual Pay

9.4.1 Effective January 1, 2018, qualifying employees shall be paid Seventy-Five Dollars (\$75) per month if they are bilingual (speak only), and One Hundred Dollars (\$100) per month if they are bi-literate (speak, write, and read).

9.4.2 The only qualifying language is Spanish.

9.4.3 Applicants must pass a standardized Spanish language test (pass/no pass) to be administered by a testing agency selected by the City.

9.4.4 To qualify for bilingual pay, Spanish must be a regular part of the employee's daily duties as determined by the City's Human Resources Department and employee's Department Director.

9.5 Cell Phones and Boot Allowance

9.5.1 City shall maintain its current practice of providing a City-issued cell phone to those employees who require a cell phone to perform their normal duties. Alternatively, eligible employees, who wish to use their personal cell phones, can receive a stipend of Seventy-Five Dollars (\$75) per month. In such an event, cell phone stipend is taxable income and is not reported to CalPERS as compensation earnable or pensionable compensation.

The annual boot reimbursement allowance shall be Two Hundred Dollars (\$200) per year to be reimbursed upon presentation of receipt. To be eligible, an employee must be required to wear safety boots as a regular part of the employee's daily duties as determined by the City's Human Resources and employee's Department Director. As an alternative, those employees have the option to purchase one pair work safety boots per year at full price, under the City's account at specified locations in the City of Menifee.

9.6 Life Insurance

9.6.1 City will provide, at its expense, term life insurance in the amount One Hundred Thousand Dollars (\$100,000) for full-time employees in the bargaining unit. The increase in term life insurance shall be effective the month following adoption of the 2020-2022 MOU.

9.7 Health Insurance

9.7.1 The City provides a monthly allocation of \$1,500.00 for employee only, which may be applied towards the cost of any benefit made available by the City at the option of the employee. The City shall increase the monthly allocation to One Thousand Seven Hundred Fifty dollars (\$1,750) for employee + 1 and employee + family, effective the month following adoption of the 2020-2022 MOU.

9.7.2 Effective January 1, 2021, the monthly allocation for employee + 1 and employee + family shall be increased to One Thousand Eight Hundred dollars (\$1,800).

9.7.3 Effective January 1, 2022, the monthly allocation for employee + 1 and employee + family shall be increased to One Thousand Eight Hundred Fifty dollars \$1,850.

9.7.4 Medical insurance is available through CalPERS for the employee and eligible dependents. Dental and vision insurance is available for employee and eligible dependents. Employees who opt-out of health insurance or use less than the City's monthly allocation may receive any unused amount as cash, subject to the Cash in Lieu limitations below. Further information and application forms are available through the City's Human Resources Department.

9.8 Cash in Lieu of Medical Insurance Phase Out

9.8.1 Effective April 1, 2018

9.8.1.1 Effective April 1, 2018, the maximum allowable cash in lieu payment will be Fifteen Thousand Six Hundred Dollars (\$15,600.00) for calendar year 2018.

9.8.2 Effective January 1, 2019

9.8.2.1 Effective January 1, 2019, the maximum allowable cash in lieu payment will be Fourteen Thousand Four Hundred Dollars (\$14,400.00)..

9.8.3 New Employees

9.8.3.1 Effective July 1, 2017, all new employees are ineligible for cash in lieu of medical insurance.

9.8.4 For those mid-management employees hired prior to July 1, 2017, who are eligible to participate in the City's cash in lieu of medical insurance, the remaining portion of the City's \$1,500 per month allocation for benefits that is not compensated as cash in lieu of payment for City benefits, may be applied to purchase other City benefits in accordance with the terms of those benefit plans.

9.9 Retirement

9.9.1 Employees are covered by the California Public Employees Retirement System (CalPERS). The formula used is two percent (2%) at 62 for “New Members” and two and seven-tenths percent (2.7%) at 55 for “Classic Members.” The City pays the employer portion of CalPERS. New Members pay 50% of normal cost. Classic Members pay their full employee share, subject to Section 9.12 for those limited number of employees who receive Employer Paid Member Contribution to CalPERS.

9.10 Employer Paid Member Contribution (EPMC) Phase Out

9.10.1 Effective July 1, 2018, and on July 1st of each succeeding fiscal year thereafter, the EPMC shall be reduced by one percent (1%) until members are paying their full employee share of CalPERS.

9.11 Deferred Compensation

9.11.1 The City offers a 457 Deferred Compensation Program through ICMA. Each employee may defer up to the maximum allowed by the IRS. Contact the City’s Human Resources Department for more information and forms.

9.12 Flexible Spending Account/Dependent Care

9.12.1 The City offers a flexible spending account which allows employees to set aside pre-tax dollars to pay for eligible health insurance premiums, healthcare expenses and/or child care. Contact the City’s Human Resources Department for more information and forms.

9.13 Education Reimbursement

9.13.1 Employees may request and be reimbursed up to Three Thousand dollars (\$3,000) per fiscal year for expenses incurred for tuition, books and fees for college-level, degree curricula or job-related courses upon prior approval of the City Manager. Contact the City’s Human Resources Department for more information and forms.

ARTICLE 10
CHANGES TO POSITIONS

10.1 Transfers

10.1.1 After notice to the Human Resources Department and approval by the City Manager, an employee may be transferred to another department by their Department Director(s) at any time and for any reason, from one position to another position in the same or comparable classification, and without loss of compensation. Employees who desire a transfer may submit a request for transfer to their Department Director for consideration. The Department Director may deny the transfer request at his/her sole discretion. Employees may also submit a request to the Human Resources Department for consideration to transfer into an open vacant position of the same classification in another department.

10.1.2 If an employee voluntarily transfers to another position in the same or comparable classification and is not successful in that position, the employee may return to his/her former position.

10.1.3 The employee's salary evaluation date shall remain the same as it was before the transfer.

10.2 Reclassification of City's Personnel Rules & Regulations

10.2.1 Should the Human Resources Department determine through a position review that the job duties of a position in the competitive service have materially changed the Human Resources Department, upon City Manager approval, may reassign the position to another classification.

10.2.2 An employee may be reclassified without competitive exam if the Human Resources Department determines that the employee has met the minimum qualifications of the new classification and has performed the duties of the reclassified position for a minimum period of six (6) months. Reclassification shall not be used for the purpose of avoiding competitive selection processes.

10.2.3 The employee's salary evaluation date shall change as a result of the reclassification.

10.2.4 The City shall notify the Association of any proposed reclassification and allow reasonable opportunity for the Association to elect to meet and confer regarding the proposed changes in accordance with Government Code section 3500, *et seq.*

10.3 Demotions

10.3.1 An employee may be demoted for cause pursuant to the Disciplinary Action policy, or for organizational reasons, pursuant to the Layoffs policy in Section 10.4.

10.3.2 A demoted employee shall be required to serve a probationary period in the lower classification unless the lower classification is in the same job series or the employee completed probation in the lower classification. In the event the demoted employee does not pass probation, the employee will be terminated from employment.

10.3.3 The effective date of a demotion shall establish a new salary evaluation date.

10.4 Lay-Offs

10.4.1 Should the City Manager determine reductions in force to be necessary due to lack of work or for financial reasons, it may initiate lay-offs. City shall notify Association of its intention and provide Association with an opportunity to negotiate the effects of a lay-off in accordance with the MMBA.

10.4.2 In determining the order of lay-offs, a combination of factors shall be considered, including but not limited to: seniority with the City; productivity; general performance; and the needs of the City. Variations from the order of lay-offs and recall from lay-off may occur when the City deems such variations appropriate under the circumstances. Before the commencement of any layoff of a regular full-time employee, the City will review the contracts and consultants in a same or similar role to determine, based on the needs of the City, if reductions can be made to contractors or consultants first.

10.4.3 The factors the City, in its sole discretion, may use to determine the order of lay-offs include, but are not limited to, the following:

10.4.4 Probationary and temporary employees shall be laid off before regular employees in the same classification; and

10.4.5 Between two regular appointees in the same classification, the employee with lesser seniority shall be laid off first. If equal seniority exists between two employees in the same classification, then performance evaluation scores will determine the order of employee lay off.

10.5 Bumping

10.5.1 “Bumping” means the displacement of an employee from his/her position by an employee in a higher classification who formerly held and passed probation in the same position, or a position in the same job family, and has been subject to a lay off.

10.5.2 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, in accordance with the criteria specified in this Bumping Rule. The laid off employee must be able to perform the essential job functions of the former position, with or without accommodation, and possess the minimum qualifications of the position, as specified by the job classification specification.

10.5.3 The City will notify laid-off employees of any positions available for bumping. Following receipt of such notification, and within three (3) calendar days of receipt of such notification, the employee must notify the Human Resources Department in writing of his/her intent to exercise his/her bumping rights, 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.

10.5.4 Where there is more than one laid-off employee entitled to bump an employee in the same position held by the laid-off employees, or a position in the same job family, factors in paragraph 1 of this Bumping Rule shall control the order of priority in which the laid-off employees may exercise their bumping rights.

10.5.5 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, or “bump”, another employee based on the criteria specified in paragraph 2 of this Rule.

10.6 Reinstatement From Lay-Off

10.6.1 Following lay-off from City employment, laid-off employees may be reinstated to employment with the City upon the recommendation of the Department Director and with the approval of the Human Resources Department, to the position from which they were laid off based on their qualifications, availability, and the needs of the organization pursuant to the Reinstatement policy in Section 10.8 of MOU.

10.7 Separations

10.7.1 All employees who separate from City service, that is, whose employment with the City terminates through separation for cause, layoff, resignation, or retirement, must:

10.7.2 Return promptly all City property to the Human Resources Department or their immediate supervisor.

10.7.3 Make arrangements to repay any existing financial obligations owed to the City.

10.7.4 In addition, employees who resign or retire must also adhere to the following procedures before they will be deemed to have separated in good standing:

10.7.4.1 Submit a written notification stating their intent to resign or retire, and the proposed effective date of separation to their immediate supervisor.

10.7.4.2 If at all possible, provide the City with a minimum two weeks advance notice of separation. The City encourages employees who become aware of their pending separation from the City to let the Human Resources Department know as far in advance as possible.

10.8 Reinstatement

10.8.1 At the recommendation of the Department Director, and with the approval of the Human Resources Department, employees who (1) resigned, retired, or were laid-off and (2) were in good standing at the time of termination of their employment, may be reinstated to their former position, if vacant, or to a vacant position in the same classification within twelve (12) months of their resignation, retirement or lay-off, without being subject to the application and conditional appointment requirements of Section 2, City's Personnel Rules & Regulations.

10.8.2 A reinstated employee shall serve a probationary period as defined in these Rules and Regulations, unless otherwise approved by the City Manager. If reinstated, credit may be granted for prior service in terms of benefit accrual rates and seniority, at the discretion of the Human Resources Department and in consultations with the Department Director; provided, however, that Employees reinstated following lay-offs shall receive credit for prior service to the City.

ARTICLE 11

GENERAL EMPLOYMENT MATTERS

11.1 Hours of Work

11.1.1 Daily hours of work (or shifts) for employees within Departments shall be assigned by the Department Director as required to meet the City's operational requirements. Full-time employment of unit employees is defined as forty (40) hours per week, five (5) days per week, eight (8) hours per day, unless otherwise agreed to by City Manager.

11.1.2 Absences or deviation from regular working hours for one or more full days, and the reason (e.g., sick, vacation, executive leave) shall be noted on the employee's time sheet or time record.

11.2 Nursing Mothers

11.2.1 The City will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for her infant child. The City shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.

11.3 Attendance

11.3.1 All Departments shall keep daily attendance records on employees, which shall be reported to the Finance Department on the employee's timesheet or time record.

11.4 Employee Performance Evaluation

11.4.1 A report of performance of each employee shall be made by the respective Department Directors or their designees after completion of a probationary period and annually thereafter. Unless changed in accordance with City's Personnel Rules & Regulations, these evaluation dates shall constitute the employee's salary evaluation date for purposes of eligibility for a merit salary increase. Employees completing a six-month probationary period should also be evaluated; however, their salary evaluation date for purposes of eligibility for a merit salary increase shall not change from their promotion effective date. Employees shall continue to receive performance evaluations on their salary evaluation date even after the employee has reached the top of the applicable salary range. In addition, a performance evaluation may be prepared at any other time at the discretion of the employee's supervisor.

11.4.2 Each performance evaluation shall be discussed with the employee. The performance evaluation will address areas of successful performance and areas that need improvement. The employee will have the opportunity to comment regarding work performance, either in a written statement attached to the report or orally. The employee shall sign the performance report to acknowledge that the employee is aware of its contents and has discussed the report with the evaluator. The employee's signature does not necessarily indicate agreement with the contents of the report. In the event that an employee refuses to sign the evaluation following his/her review of the evaluation, such refusal will be so noted by the evaluator on the evaluation form.

11.4.3 The employee will receive a copy of the performance evaluation, and the original, along with any written comments submitted by the employee, will be in the employee's personnel file.

11.5 Employee Wellness Program

11.5.1 City shall develop an Employee Wellness Program, to be implemented no later than January 31, 2020.

11.5.2 The program shall offer a minimum of: a.) Employee Wellness Day – 1 paid day of leave (9 hours) available July 1st to be used during the fiscal year, which cannot be carried forward to the next fiscal year; b.) Healthy programs/classes available at City; and c.) Employee membership discount to participating local fitness gyms/programs.

ARTICLE 12
LEAVE OF ABSENCE

12.1 Eligibility for Paid Leave of Absence

12.1.1 In order to be eligible for City payment of the paid leave of absence outlined herein or subsequently granted by the City, an employee must be a full-time employee and either a regular appointee or a probationary appointee.

12.2 Vacation

12.2.1 Rate of Accrual

12.2.1.1 Every full-time probationary and regular employee shall earn vacation as follows:

Years	Hours	Bi-Weekly Accrual
0-3	80	3.08
4	120	4.62
5	160	6.15

12.2.1.2 Vacation accrues bi-weekly on a pro rata basis.

12.2.1.3 Employees may freeze up to 80 hours of vacation during medical leave of absence.

12.2.2 Scheduling Vacations

An employee may take vacation leave at any time, subject to approval by the employee's Department Director or his/her designee. Approvals will be based upon work load, staffing coverage, seniority, timing of the request, and any other work-related factors appropriate for consideration by the Department Director. At no time will Sick leave be used to extend vacation time off.

12.2.3 Vacation Pay Upon Termination

Any employee terminating from the City service will be paid at his/her hourly rate of pay for all earned vacation, if any, accrued up through termination.

12.2.4 Vacation Leave Limits and Buy-Back

12.2.4.1 Maximum Accumulation of Vacation Leave

12.2.4.1.1 As of July 1st of each year, an employee shall have no more than a maximum of four hundred forty (440) hours of accrued and unused Vacation Leave. Any excess hours above four hundred forty (440) hours will be automatically cashed out by the City at the employee's base

rate of pay as of June 30 of that year. Payment shall be made no later than July 31st.

12.2.4.2 Vacation Leave Usage

12.2.4.2.1 Employees must use at least (40) hours of Vacation Leave during each fiscal year.

12.2.4.2.2 Department Directors are responsible for arranging leave schedules so that adequate personnel are available to carry on necessary City work.

12.2.4.2.3 When practicable, employees should be permitted to schedule Vacation Leave at times most acceptable to the employee. In large departments the choice of vacation times should be arranged according to seniority or some other equitable method.

12.3 Pay In Lieu of Vacation Leave (Buy Back)

12.3.1 Employees who elect Vacation Leave buy back shall have payment calculated at the employee's base rate of pay as of the date of the buy-back request.

12.4 Buy Back Guidelines

12.4.1 During each fiscal year (July 1 thru June 30), but no later than June 15, an employee may request that the City buy back accrued and unused Vacation Leave from the employee's account according to the following schedule:

Annual Leave Used During Preceding 12 Months	Maximum Buy-Back
40 Hours	120 Hours
60 Hours	140 Hours
80 Hours	160 Hours

12.4.2 The employee must have sufficient hours of earned and unused Vacation Leave credits.

12.4.2.1 After the buy-back, there must be a minimum of eighty (80) hours of earned and unused Vacation Leave credits remaining in the employee's account.

12.5 Vacation Leave — Separation from the City

12.5.1 Employees separating from the City service shall receive payment for one hundred percent (100%) of their accrued and unused Vacation Leave at their current hourly rate.

12.6 Holidays

Every full-time probationary and regular employee shall be entitled to the following paid holidays each calendar year and such other days as may be designated by action or the City Council. A Holiday for pay or accrual purposes is the actual hours regularly scheduled to be worked on that Holiday.

12.6.1 January 1 (New Year's Day)

12.6.2 The third Monday in January (Martin Luther King)

12.6.3 The third Monday in February (President's Day)

12.6.4 The last Monday in May (Memorial Day)

12.6.5 July 4th (Independence Day)

12.6.6 The first Monday in September (Labor Day)

12.6.7 The second Monday in October (Columbus Day)

12.6.8 November 11 (Veteran's Day)

12.6.9 Thanksgiving Day

- 12.6.10 The Friday after Thanksgiving Day
- 12.6.11 December 24 (Christmas Eve)
- 12.6.12 December 25 (Christmas Day)
- 12.6.13 December 31 starting at noon (New Year's Eve)
- 12.6.14 Floating Holiday (determined by employee)
- 12.6.15 Wellness Day (determined by employee)

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.

12.7 Floating Holiday and Wellness Day

Full-time probationary and regular employees shall receive one floating holiday and one wellness day each fiscal year as granted by City Council and/or City Manager. The floating holiday and wellness day must each be used on or before June 30th of each year. Should employee not use the floating holiday or wellness day prior to June 30th the City will not cash out or carry over to the following year. The use of floating holiday and wellness day are subject to Department Director approval. In the event of termination, employees will receive payment for unused floating holiday up to 8 hours and payment for unused wellness day up to 9 hours.

12.8 Sick Leave

12.8.1 To keep the City and each department therein running smoothly and efficiently, it is important that every employee be on the job on time regularly. For this reason, careful attention is given to promptness, absence record and overall dependability.

12.8.1.1 The City recognizes, however, that an employee may occasionally be absent due to injury or illness. As a result, the Sick Leave Policy is designed to provide protection to employees against loss of income during unavoidable illness or injury.

12.8.2 **Accrual of Sick Leave**

12.8.2.1 All full-time probationary and regular employees are eligible to accrue four (4) hours of sick leave per pay period. There is no limit on the total amount of accrued sick leave.

12.8.2.2 An employee shall not receive payment for unused accumulated sick leave upon termination of employment or retirement (either disability or service retirement). An employee may not use sick leave to extend a vacation, retirement (either disability or service retirement) or termination date.

12.8.3 **Use of Sick Leave**

12.8.3.1 To be eligible for sick pay, employees unable to report to work due to illness must telephone their supervisor directly, each day of the illness, as far in advance as possible, but no later than one hour before their scheduled start time. If the supervisor is not available, the employee should contact the Human Resources Department to report his/her absence due to illness. If an employee is unable to make the call personally, a family member or friend should contact the supervisor or Human Resources Department. This policy must be followed unless an exception has been made for a particular absence, and a written memo to this effect has been sent to the Human Resources Department.

12.8.4 **Proof of Illness**

12.8.4.1 If the Department Director has questions about an employee's absence due to illness, he/she may request, at his/her sole discretion, that the employee produce a certificate issued by a licensed physician or licensed health care professional after 3 consecutive days off before paid sick leave is granted.

12.8.5 **Use of Sick Leave for Family**

12.8.5.1 In cases of illness of a family member, an employee's sick leave entitlement for the year can be used to attend to the illness of a spouse, domestic partner, parent, or child.

12.9 Family and Medical Leave

12.9.1 In accordance with federal and state law and regulations, the City will provide family and medical leave, which is unpaid leave, to eligible employees. Unless otherwise provided by this Section, “leave” under this Section refers to leave pursuant to the Family and Medical Leave Act of 1993 (“FMLA”) and the California Family Rights Act (“CFRA”). Employees with any questions or requests for information about family and medical leave should consult the Human Resources Department.

12.9.1.1 Concurrent with paid leave. The City requires an employee to utilize all accrued and unused sick leave concurrently with the use of family care and medical leave (FMLA and CFRA) which may be coordinated with State Disability Insurance (“SDI”). Employees may elect to use accrued and unused vacation concurrently, and may freeze up to 80 hours of vacation during a medical leave of absence in accordance with 12.2.1.3 above.

12.9.2 Definitions

12.9.2.1 “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken. Each time an employee takes eligible leave, the remaining leave entitlement is based on the amount of family and medical leave taken during the immediate preceding 12 months.

12.9.2.2 “12 workweeks” means twelve weeks of leave based on the employee’s regular schedule. For example, if an employee works 20 hours per workweek, he or she would be eligible to take 12 weeks times 20 hours, for a total of 240 hours of family medical leave.

12.9.2.3 “Child” means a child 1) under the age of 18 years or 18 years and older who is incapable of self-care because of a mental or physical disability; 2) for whom the employee has actual day-to-day responsibility for care; and 3) for whom the employee is a parent.

12.9.2.4 “**Parent**” means a biological, adopted, foster, or individual who is a legal guardian.

12.9.2.5 “**Spouse**” means a husband or wife as defined or recognized under California State law for purposes of marriage.

12.9.3 **Eligibility**

An employee is eligible for leave if the employee:

12.9.3.1 Has been employed for at least 12 months (which need not be consecutive); and

12.9.3.2 Has worked for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The Fair Labor Standards Act (FLSA) “hours worked” principles apply in determining whether an employee meets the “at least 1,250 hours” requirement.

12.9.4 **Reasons for Leave**

12.9.4.1 Leave may be taken for any one, or for a combination of, the following reasons;

12.9.4.2 The birth of the employee’s child or to care for the newborn child;

12.9.4.3 The placement of a child with an employee for adoption or foster care or to care for the newly placed child;

12.9.4.4 To care for the employee’s child, parent (but not in-law) or spouse with a serious health condition; and/or

12.9.4.5 The employee’s own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position. “Serious health condition” means an illness, injury impairment, or

physical or mental condition that involves inpatient care or continuing treatment by a health care provider. It includes:

12.9.4.5.1 Pregnancy or prenatal care;

12.9.4.5.2 Hospital Care – an inpatient stay at a hospital, hospice, or residential medical care facility; or

12.9.4.5.3 Incapacity of three or more days and medical treatment – incapacity that lasts more than three consecutive days;

12.9.4.5.4 Incapacity plus two or more treatments – treatment of two or more times by a health care provider;

12.9.4.5.5 Incapacity plus continuing treatment – at least one treatment by a health care provider that results in a regimen of continuing treatment;

12.9.4.5.6 Incapacity from a chronic condition – incapacity from a chronic serious health condition such as asthma, diabetes, or epilepsy;

12.9.4.5.7 Incapacity from a long-term condition – incapacity from a longer or permanent condition for which treatment may not be effective, such as Alzheimer’s disease; or

12.9.4.5.8 Absences for treatment- to receive or recover from multiple treatments by a health care provider, such as chemotherapy, physical therapy, or kidney dialysis.

12.9.5 **Amount of Leave**

12.9.5.1 **Bonding Leave**

12.9.5.1.1 Eligible employees shall receive forty (40) hours of paid Bonding Leave for the birth or adoption of a child. Bonding Leave may be used within one year of the birth or adoption of a child.

12.9.5.2 **Total Leave Entitlement**

12.9.5.2.1 Eligible employees are entitled to a total of 12 workweeks of leave during any rolling 12-month period for any FMLA or CFRA qualifying reason.

12.9.5.3 **Limitations on Leave**

12.9.5.3.1 Leave to care for a newborn or newly placed child must conclude within twelve (12) months after the birth or placement of the child.

12.9.5.3.2 When both parents are employed by the City, they are together entitled to a combined total of twelve (12) workweeks of FMLA/CFRA leave within the designated 12 month period for the birth, adoption or foster care placement of a child with the employees, for aftercare of the newborn or newly placed child, and to care for a parent (but not in-law) with a serious health condition. Each spouse may be entitled to additional FMLA/CFRA leave for other FMLA/CFRA qualifying reasons (i.e., the difference between the leave taken individually for any of the above reasons and 12 workweeks, but not more than a total of 12 workweeks per person).

12.9.5.4 **Minimum Duration of Leave**

12.9.5.4.1 Serious health condition: subject to compliance with the medical certificate requirements of this Rule, there is no minimum duration for leave associated with a serious health condition of the employee or the employee's child, parent, or spouse.

12.9.5.4.2 Child-bonding: if leave is requested for the birth, adoption or foster care placement of a child of the employee, the minimum duration of such leave is two weeks, with the exception of up to two occasions when an employee may take leave in a smaller increment of time.

12.9.6 **Intermittent or Reduced Work Schedule Leave**

12.9.6.1 Intermittent leave is leave taken in separate blocks of time. A reduced work schedule leave is a leave schedule that reduces an employee's usual number of hours per workweek or hours per workday.

12.9.6.2 An employee may request intermittent or reduced work schedule leave from his/her supervisor. The City will make every effort to accommodate the employee's request consistent with business necessity.

12.9.6.3 If an employee takes leave intermittently or is on a reduced work schedule basis, he/she must, when requested, attempt to schedule the leave so as not to unduly interrupt the City's operations. When an employee takes intermittent or reduced work schedule leave for a foreseeable planned medical treatment, the City may temporarily transfer the employee to an alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave.

12.9.7 **Benefits While on Leave**

12.9.7.1 **Compensation.** Leave under this policy is unpaid after all accrued and unused vacation and sick leave is exhausted.

12.9.7.2 **Accrued Leaves.** While on leave, employees do not accrue vacation, sick, or other paid leave time, and their performance evaluation dates may be adjusted, to the same extent as other unpaid leaves, as provided in the Leave of Absence Without Pay, in Section 12.14 of MOU.

12.9.7.3 **Health Benefits.** While on leave an employees will continue to be covered by the City's group health insurance and life insurance to the same extent that coverage is provided while the employee is on the job.

12.9.7.4 **Other Benefits.** Employees shall not accrue sick leave, paid holidays or vacation leave while on FMLA/CFRA leave.

12.9.8 **Employee Notice of Leave**

12.9.8.1 Employees must submit requests for leave in writing to the Human Resources Department. Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If the leave is foreseeable, at least 30 day notice is required. In addition, if an employee knows that leave will be needed in the future, but does not know the exact date(s) (e.g. for the birth of a child or take care of a newborn), the employee shall inform the Human Resources Department as soon as possible that such leave will be needed. Whenever Human Resources Department is notified of a request of leave under this policy, Human Resources will notify the requesting employee's Department Director or designee. The Human Resources Department will also notify the Department Director of any determination to grant or deny the request.

12.9.8.2 If the Human Resources Department determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, Human Resources may delay the granting of the leave until, in his or her discretion, adequate coverage is found for the employee's position.

12.9.9 Medical Certification

12.9.9.1 Employees who request leave for themselves or to care for a child, parent or a spouse must provide written certification of the eligible individual with a serious health condition.

12.9.9.1.1 Timing of Certification. Medical certification should be provided with the employee's request for leave, in accordance with the same time requirements for notice under 12.9.8. When this is not possible, the employee must provide the requested certification to the Human Resources Department within the time frame requested by the Human Resources Department, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

12.9.9.1.2 Recertification. If the Human Resources Department has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding.

12.9.9.1.3 Certification for Intermittent Leave or Reduced Schedule. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

12.9.10 **Reinstatement Upon Return from Leave**

12.9.10.1 **Right to Reinstatement**. Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

12.9.10.2 **Fitness for Duty Certification**. As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her, job, the employee must obtain and present a fitness-for-duty certification form the health care provider that the employee is able to resume work. Failure to provide such certification may result in denial of reinstatement.

12.10 **Pregnancy Disability Leave**

12.10.1 **Eligibility**

12.10.1.1 Any employee who is disabled because of pregnancy, childbirth, or a related medical condition may be entitled to pregnancy disability leave (PDL).

12.10.1.2 For employees who are also eligible for FMLA/CFRA leave, PDL is not counted as time used for CRFA leave, but does run concurrently with available FMLA leave.

12.10.2 **Reasons for Leave**

12.10.2.1 PDL is for any period(s) of actual disability caused by pregnancy, childbirth or related medical conditions up to four (4) months per pregnancy. PDL does not need to be taken in one continuous period of time but can be taken on an as-needed basis. Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth are all covered by PDL.

12.10.3 **Amount of Leave**

12.10.3.1 Employees may take up to four months (or 88 workdays for a full-time employee) of PDL.

12.10.4 **Benefits While on Leave**

12.10.4.1 **Benefits**. PDL is unpaid. However, employee may use accrued leave as if on FMLA and will receive benefits pursuant to Family and Medical Leave up through exhaustion of the employees' available FMLA leave.

12.10.4.2 Employees who are not eligible for FMLA leave or employees who continue taking PDL after they have exhausted their available FMLA leave, will receive benefits only to the same extent as other similarly-situated employees on leave for a disability.

12.10.4.3 **Accrued leaves**. While on leave, employees do not accrue vacation, sick, or other paid leave time, and their performance evaluation dates may be adjusted, to the same extent as any other unpaid leaves, as provided in Leave of Absence Without Pay, Article 12.14.

12.10.5 **Substitution of Paid Accrued Leaves**

12.10.5.1 Employees taking PDL may concurrently use any available sick leave. Employees may also use any accrued vacation or other accrued time off as a part of their PDL before taking the remainder of their leave as an unpaid leave.

12.10.6 **Employee Notice of Leave**

12.10.6.1 To the extent possible, employees requesting PDL should follow the authorization procedures for leaves of absence without pay, as provided in Leaves of Absence Without Pay, Article 12.14.

12.10.7 **Medical Certification**

12.10.7.1 The City may require employee requesting PDL to obtain a certification from your health care provider of your pregnancy disability. The certification should include:

12.10.7.1.1 The date on which the disability due to the pregnancy began;

12.10.7.1.2 The probable duration of the periods of disability;
and

12.10.7.1.3 A statement that, due to the disability, you are unable to work at all or to perform any one or more of the essential functions of your position without undue risk to yourself, the successful completion of your pregnancy or to another person.

12.10.8 **Reinstatement upon Return from Leave**

12.10.8.1 **Reinstatement to Position.** Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the PDL period.

12.10.8.2 **Fitness for Duty Certification.** As a condition of reinstatement, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work in the position sought. Failure to provide such certification may result in denial of reinstatement.

12.11 Jury Duty and Witness Leave

12.11.1 All employees in the competitive service who are required to serve jury duty or as a witness in court shall be entitled to regular compensation for up to ten (10) working days of service with full pay. If an employee is required to serve more than ten working days, then the City Manager, at his/her sole discretion, may grant an extension of this leave period.

12.11.2 If summoned to jury duty or as a witness, employees should immediately notify their supervisor.

12.11.3 The Jury Duty Service form, as well as the compensation received for the court must be surrendered to City in order to receive a payroll check for the time period covering the days away on jury duty. The employee may retain any travel, parking and meal allowance granted by the court.

12.12 Military Leave

12.12.1 Military leave with pay shall be granted in accordance with the provisions of the Military and Veteran's Code of applicable State and Federal law. An employee entitled to military leave shall give his/her Department Director an opportunity within the limits of military regulation to determine when such leave shall be taken. Prior to taking such leave, an employee shall present a copy of his/her military orders to the Department Director. The Department Director shall advise the Human Resources Department of such military orders promptly. The employee's work schedule may be temporarily changed by the Department Director to accommodate the leave and department workloads. Benefits shall continue to accrue to the employee to the extent required by law.

12.13 Bereavement Leave

12.13.1 A probationary or regular full-time employee shall be granted a leave without loss of pay in case of death of a member of the employee's immediate family. Up to three (3) days without loss of pay shall be granted in the event the deceased resided in the State of California. If out of state travel is required, up to five (5) days leave without

loss of pay shall be granted. Additional time off may be taken as sick leave, vacation time or other paid leave or as authorized leave without pay upon approval of the City Manager.

12.13.2 Immediate family as used in this policy shall be defined as the spouse, registered domestic partner, children, step-relations, parents, brothers, sisters, grandparents, or in-laws.

12.14 Leave of Absence Without Pay

12.14.1 At the sole discretion of the City, an employee may be granted a leave of absence without pay upon recommendation of the Department Director and approval of the City Manager. The city may fill the position with a temporary or provisional employee during the term of the leave of absence or undertake any other appropriate measures to address workloads needs. Nothing herein shall require or preclude the City from offering unpaid leave as a reasonable accommodation under state and federal disability law.

12.14.1.1 **Authorization Procedure.** Employees requesting a leave of absence without pay must submit the request in writing to their Department Director, and the request should state the reason for the request and the anticipated beginning and ending dates of the leave. The Department Director will submit the request along with his or her recommendation to the City Manager who will make a decision in writing and transmit the decision to the employee. The decision of the City Manager shall be final and is not subject to grievance or appeal. The City Manager's determination will include consideration of the following factors:

12.14.1.2 Any history of excessive unauthorized absences or leave abuse;

12.14.1.3 Any detrimental effect on the operation of the department/
division; and

12.14.1.4 The reason for the leave of absence.

Examples of reasons that may be considered are:

12.14.2 Illness or disability;

12.14.3 To take a course of study that will increase the employee's usefulness or effectiveness to the City;

12.14.4 Other approved personal reasons. Use of the leave of absence for a purpose other than that requested may be cause for forfeiture of reinstatement rights or disciplinary action, up to and including dismissal.

12.14.5 **Length of Leave And Extension**

12.14.5.1 Leaves of absence without pay must not exceed one year, provided that the City Manager may extend a leave of absence for an additional period not to exceed one year. Employees requesting a leave of absence extension must submit a request in accordance with the procedures of paragraph 1 of this Rule no later than fourteen (14) calendar days prior to the approved expiration of the original leave of absence.

12.14.6 **Return from Leave**

12.14.6.1 When an employee intends to return from an authorized leave of absence without pay, either before or upon the expiration of such leave, the employee shall contact the Department Director at least fourteen (14) days prior to the planned day of return. The Department Director shall promptly notify the Human Resources Department of the employee's intention. Failure of an employee to abide by this notification procedure or to report for work promptly at the date of leave expiration shall be grounds for discipline up to and including termination.

12.14.6.2 Employees returning from a leave of absence without pay because of illness or disability must first submit to Human Resources a release to work from their treating physician that satisfactorily certifies the employee can perform the essential functions of the position to which he or she desires to return, with or without accommodation. Further, the employee may be subject to an examination by a City-approved physician to ensure that the employee can perform the essential functions of the position with or without accommodation.

12.14.7 **Adjustment to Accrual of Benefits**

12.14.7.1 Sick leave, holiday, and vacation leave will not accrue during any unpaid leave absence.

12.14.8 **Adjustment to Date Of Performance Evaluation**

12.14.8.1 Any unpaid leave of absence that exceeds five (5) consecutive calendar days will result in a proportionate adjustment to the employee's performance evaluation date for all purposes, including, consideration of a merit salary increase.

12.15 Administrative Leave

The City manager, in his/her discretion, may place an employee on administrative leave with pay and benefits. During such leave, the employee remains subject to this MOU and all City Policies, including the Personnel Rules & Regulations. Employee must be available to work at all times.

ARTICLE 13

DISCIPLINARY ACTION

13.1 Policy on Discipline

13.1.1 No employee who holds a regular appointment who has passed his/her one (1) year probationary period shall be disciplined without cause. Probationary employees are at-will and are subject to termination without cause. For purposes of this Article, disciplinary action shall be defined to include one or more of the following: oral warnings, written reprimands, suspensions, demotions, reductions 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 Manager level or above.

13.2 Notice of Proposed Discipline

13.2.1 Except in emergencies, or as authorized by law, suspensions, demotions, reductions in pay, or discharge, shall not be put in effect until the employee has received written notice advising the employee of the proposed action, the reason(s) therefore, the facts giving rise thereto, the proposed effective date, access to written material that formed a basis for the proposed action, and the opportunity to respond to the Department Director orally or in writing within five (5) working days, of receipt of such notice. If deemed necessary by the Department Director or Human Resources, an employee may be placed on administrative leave with pay pending investigation of allegations that may lead to discipline.

13.3 Appeal of Disciplinary Action

13.3.1 If a disciplinary action consists of a suspension of eight (8) hours or more; a reduction in pay equal to a eight (8) hour or more suspension; demotion, or discharge, the employee may appeal the proposed disciplinary action prior to its implementation, in accordance with the Third Level of the Grievance Procedure in Article 14. Any such appeal must be filed within ten (10) working days of the notice of the disciplinary action. The cost of providing a hearing officer or arbitrator to hear disciplinary appeals and the cost of a court reporter shall be borne by the City.

13.4 Causes for Discipline

13.4.1 Examples of causes for disciplinary action include, but are not limited to:

13.4.1.1 Dishonesty;

13.4.1.2 Incompetence;

13.4.1.3 Inefficiency;

13.4.1.4 Neglect of duty;

- 13.4.1.5 Negligence which affects the safety of the employee or others;
- 13.4.1.6 Violation of any City policy, rule or requirement;
- 13.4.1.7 Unauthorized absences (including tardiness) or abuse of sick leave or any other leaves;
- 13.4.1.8 Violation of these Rules, or other rules, regulations or orders established by a supervisor, department, or City Council;
- 13.4.1.9 Conviction of a crime that interferes with employment;
- 13.4.1.10 Discourtesy to the public or fellow employees;
- 13.4.1.11 Misuse or abuse of City property or equipment;
- 13.4.1.12 Substandard job performance;
- 13.4.1.13 Insubordination;
- 13.4.1.14 Any activities, including outside employment that create a conflict of interest with City employment and are not specifically authorized by the Department Director;
- 13.4.1.15 Falsification of any City report or record (including job application);
- 13.4.1.16 Other acts which are incompatible with service to the public including, but not limited to, any conduct or behavior, either on or off duty, which causes discredit or would reasonable tend to cause discredit to fall upon the City, its officer, agents or departments;
- 13.4.1.17 Documented verbal and/or physical abuse/harassment of co-workers and/or the general public; and
- 13.4.1.18 Working overtime without authorization.

ARTICLE 14
GRIEVANCE PROCEDURE

14.1 Early Resolution. This grievance procedure is intended to ensure that every reasonable effort will be made to resolve problems as near as possible to the point of origin. Definitions of grievances are as follows:

14.2 Definitions

14.2.1 “**Grievance**” – A written allegation by an employee that there has been a violation, misapplication, or misinterpretation of a specific term(s) of this MOU or existing City Rule(s), Regulation(s) or Policy(ies) regarding working conditions.

14.2.2 “**Grievant**” – A regular or probationary employee who alleges in a grievance that the employee has been directly wronged by a violation of specific terms of this MOU or existing City Rule(s), Regulation(s) or Policy(ies) regarding hours, wages, and terms and conditions of employment.

14.2.3 “**Immediate Supervisor**” – The appropriate supervisor or manager to whom the employee is accountable.

14.2.4 “**Response and File**” – Personal delivery or deposit in the U.S. mail, postage prepaid. If mail delivery is used, it shall be by certified, return receipt requested mail and the certified receipt date shall establish the date of response or filing. If personal delivery is used, the calendar date of delivery shall establish the date of response or filing.

14.3 Level One – Informal Review

14.3.1 An employee shall have the right to present a grievance and to have the complaint considered by the immediate supervisor no later than fifteen (15) working days after the event giving rise to the complaint, or no later than fifteen (15) workings days after the employee knew or reasonably should have known of the event giving rise to the grievance.

14.3.2 The employee, whenever possible, shall attempt to resolve the grievance informally with his/her supervisor.

14.3.3 The immediate supervisor shall provide and answer to the employee no later than fourteen (14) working days after the Level One meeting. Such response shall be provided orally.

14.3.4 A resolution of the grievance at the informal level shall be precedent setting.

14.4 Level Two - Formal Review

14.4.1 If the grievance is not resolved through Level One informal discussions, the employee may file a Level Two grievance with the Department Director no later than ten (10) working days after the response from the immediate supervisor at Level One. The grievant shall state the following clearly and concisely on a grievance form provided by the City:

14.4.1.1 The specific term(s) of this MOU or the City Rule(s), Regulation(s) or Policy(ies) regarding working conditions, which have been violated;

14.4.1.2 The action grieved, including names, dates, places and times and how it violated a specific term(s) of the City Rule(s), Regulation(s) or Policy(ies) regarding working conditions;

14.4.1.3 The remedy sought;

14.4.1.4 The name and classification of the grievant and his/her signature;

14.4.1.5 The name of the representative, if any;

14.4.1.6 The date of submission.

14.4.2 The Department Director shall hold a meeting with the grievant at a mutually acceptable time and location no later than ten (10) working days after the receipt of the grievance. The Department Director shall respond in writing to the grievant within ten (10) working days of the Level Two meeting.

14.5 Level Three

14.5.1 In the event the grievance is not settled at the Level Two, or in the case of disciplinary action within the meaning of Section 13.3 of MOU, the grievant may file a Level Three grievance with the City Manager no later than ten (10) working days after the Level Two response. The grievant shall include in the grievance a written statement indicating the reason that the proposed settlement at Level Two was unsatisfactory. The City Manager may hold a meeting with the grievant at a mutually acceptable time and location. The City Manager shall respond to the grievant no later than ten (10) working days after the receipt of the Level Three grievance.

14.5.2 The grievant shall present at Level Three all issues and written evidence known or which could have been reasonably known. No additional issues may be presented by the grievant after Level Three, except by mutual agreement.

14.5.3 Amendments and/or modifications to the grievance shall not be made by the grievant after the Level Three filing date, except by mutual agreement. This provision does not preclude either party from presenting new evidence should either party discover it at a later date. Each party shall make an effort to share evidence with the other upon discovery of said evidence.

14.5.4 If the grievance has not been settled at Level Three, then within ten (10) working days after receipt of the Level Three written decision or the expiration of the time limits for making such decision, upon request of the grievant, the grievant may request arbitration by giving notice to that effect, by certified mail, return receipt requested, directed to the Human Resources Department.

14.6 Level Four – Arbitration

14.6.1 The arbitration/hearing procedures shall be conducted in accordance with the rules of the State Mediation & Conciliation Service (“SMCS”) or the Office of Administrative Hearings (“OAH”) in the case of an appeal from discipline.

14.6.2 The parties shall select an arbitrator/hearing officer by requesting a list from SMCS. The parties shall strike arbitrators in alternating fashion until there is one arbitrator remaining on the list. This arbitrator shall then serve as the arbitrator, unless the hearing officer is appointed by OAH.

14.6.3 The cost of any arbitration/hearing proceeding shall be divided equally between the City and the Grievant, except in the case of an appeal from disciplinary action.

14.6.4 Failure on the part of the City representative or grievant to appear in any case before an arbitrator/hearing officer, without good cause, shall result in the forfeiture of the case and responsibility for payment of all costs of arbitration. “Good Cause” shall be defined as a circumstance(s) beyond control of the party failing to appear. Any cancellation or postponement fee shall be borne the responsible party.

14.6.5 A final decision or award by the arbitrator/hearing officer shall be made within thirty (30) calendar days after the close of the hearing. Such decision or award shall be advisory and subject to the approval of the City Manager. Both parties shall be given the opportunity to submit their arguments before the City Manager with regard to the Arbitrator’s/Hearing Officer’s “Findings of Facts,” prior to such approval. After weighing the Arbitrator’s findings, the City Manager may then reaffirm, modify or revoke the Arbitrator’s decision. The decision of the City Manager is final.

14.6.6 Expenses for witnesses shall be borne by the party who calls them, except where City employees testify.

14.6.7 The standard of review for the arbitrator/hearing officer is whether the City violated a specific term(s) of this MOU or the City Rules(s), Regulation(s) or Policy(ies) regarding working conditions in the case of non-disciplinary appeals. In the

case of an appeal from discipline, the standard is whether the preponderance of the evidence establishes cause for the discipline and the appropriateness of the penalty.

14.6.8 If a question exists as to the arbitrability of an issue, the arbitrator shall determine the arbitrability questions prior to hearing the formal presentations of the parties on the merits of the grievance.

14.7 General Provisions

14.7.1 Failure of the grievant to comply with the time limitations of this Article shall render the grievance null and void. Failure by the City representative to timely respond under this Article shall permit the grievance to be filled at the next level.

14.7.2 Time limits set forth in this Article may be extended by mutual agreement which shall not be unreasonably withheld. The parties may also agree that a particular grievance may be initiated at a higher step than Step I, based on the nature and complexity of the grievance.

14.7.3 No punitive action shall be assessed against an employee for utilizing the grievance procedure.

14.7.4 Employees shall be granted release time not to exceed one (1) hour for the purposes of discussing a potential grievance with their representative or preparing for a grievance which has been filed at Level Two. Such release time for pre-grievance consultation or grievance preparation is applicable per grievance, and its scheduling shall not interfere with departmental operations.

14.7.4.1 The parties may consolidate at any level grievance on similar issues.

14.7.4.2 Grievance records shall be filed separately from an employee's personnel file and shall be considered confidential.

14.7.4.3 A grievant may withdraw a grievance at any time. The grievant shall not file any subsequent grievance on the same alleged incident.

14.7.4.4 A decision by the grievant to submit a grievance to arbitration shall automatically be a waiver of all other remedies except as provided otherwise by statute.

14.7.4.5 No individual City Council member may be approached concerning the grievance at any time the grievance is being processed.

14.7.4.6 Organizational channels shall be utilized at all times and participation in the grievance and the discussion of information related thereto shall be limited to the parties to the grievance except when such other persons are identified and/or called as witnesses.

14.7.4.7 In the event of a disciplinary action involving a suspension, reduction in pay or demotion, or termination within the meaning of Section 13.3 of MOU, where a pre-disciplinary meeting has already been held, Levels One through Two of the grievance procedure shall be eliminated and Levels Three and Four shall be utilized as appropriate, except City, at its sole discretion, may use a hearing officer appointed by the Office of Administrative Hearings.

14.7.4.8 A group of employees may file one grievance rather than individual grievances, as long as the following conditions are met:

14.7.4.9 Each employee in the “group” grievance is individually named.

14.7.4.10 The grieve-able matter is exactly the same for each employee cited in the grievance.

14.7.4.11 The City is not obligated to conduct grievance hearings or provide grievance responses to each individual, but only to one of the employees involved who represents the group filing the grievance.

14.8 Authority of Third Party

14.8.1 Each issue decided by a neutral third party shall stand on its own merits and shall not be used as precedent by any other neutral third party in deciding any issue before him or her.

14.9 No Retaliation

14.9.1 Employees will not be penalized or retaliated against in any way for using the grievance procedures, testifying as a witness in a grievance proceeding or assisting with a grievance.

ARTICLE 15

RATIFICATION AND IMPLEMENTATION

15.1 Ratification and Implementation

Representatives of management for the City and representatives of the Association have met on a number of occasions and have conferred in good faith, and exchanged proposals concerning wages, hours, fringe benefits and other terms and conditions of employment of employee members represented by Association.

The management representatives and the representatives of the Association have reached an understanding as outlined in MOU which was ratified by the Association membership. This MOU constitutes a mutual recommendation to be jointly submitted to the City Council for adoption. After the City Council acts, by majority vote, to formally approve this MOU, the City Council shall enact any necessary amendments to City Ordinances or Resolutions consistent with this MOU.


Dated this 18th day of September, 2019.

[Signatures on following page]

CITY OF MENIFEE

MENIFEE CITY EMPLOYEES
ASSOCIATION


Mid-Management Employees Unit

By: 


Rochelle Clayton, Deputy City Manager

By: 


Mary LaPlante, CEA

By: 

Jeff Wyman, Assistant City Manager

By: 

Lisa Gordon

By: 

Daniel Alvarado, Deputy Human
Resources Director

By: 

Don Sharp