

MEMORANDUM OF AGREEMENT

Between

The City of San José

And

**The International Union of
Operating Engineers, Local No. 3
(OE#3)**



July 1, 2024 – June 30, 2027

**Operating Engineers, Local #3
Memorandum of Agreement
July 1, 2024 – June 30, 2027**

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For information regarding the classifications assigned to OE#3 and the current pay range, please see the Human Resources Department's webpage at the following link:

- <https://www.sanjoseca.gov/your-government/departments-offices/human-resources>

MEMORANDUM OF AGREEMENT
City of San José
And
The International Union of Operating Engineers, Local No. 3
July 1, 2024 – June 30, 2027

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, on April 10, 2024, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Union of Operating Engineers, Local No. 3, hereinafter referred to as the "Union" or "OE#3."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective July 1, 2024, except where otherwise provided, and shall remain in effect through June 30, 2027. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is mutually agreed that the first meeting of the parties will be scheduled no later than fifteen (15) calendar days after the City or Union receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates. This notice must be made in writing, must specifically include a request to commence bargaining, and must include proposed dates for the meeting.

ARTICLE 2 RECOGNITION

Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the International Union of Operating Engineers, Local No. 3, hereinafter referred to as the Union, is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute appropriate units.

ARTICLE 3 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein, to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the International Union of Operating Engineers, Local No. 3.

ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution No.

39367 of the Council of the City of San Jose and in Part 2 - Definitions, of Chapter 3.04 of Title III, of the San Jose Municipal Code unless it is apparent from the context that a different meaning is intended.

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Salary Ranges/Additional Retirement Contributions.

5.1.1 Wages.

5.1.1.1 Fiscal Year 2024-2025. Effective June 23, 2024, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 6.00%

5.1.1.2 Fiscal Year 2025-2026. Effective the first full pay period of Fiscal Year 2025-2026, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 4.00%.

Effective the first full pay period in January 2026, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 1.00%.

5.1.1.3 Fiscal Year 2026-2027. Effective the first full pay period of Fiscal Year 2026-2027, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 3.50%.

If the revised 5-Year Forecast included as part of the 2026-2027 Proposed Operating Budget includes a \$10 million dollar surplus or more in Fiscal Year 2026-2027, the general wage increase effective the first full pay period of Fiscal Year 2026-2027, for employees holding positions in classifications assigned to OE#3 shall be 4.00%.

5.1.2 Salary Steps.

The salary steps for all classifications represented by OE#3 shall be approximately 2.5%

5.2 Uniform Allowance.

5.2.1 An annual Uniform Allowance not to exceed \$800.00 shall accrue for eligible employees regularly assigned to the classifications listed below, provided that such eligible employees are required, in the performance of the assigned duties of such classifications, to wear an approved uniform.

2451 Parking & Traffic Control Officer
2452 Parking & Traffic Control Officer (Part-Time)
2453 Senior Parking & Traffic Control Officer

5.2.2 Effective December 20, 2015, payment shall be made during the first two (2) pay periods of each month, in the amount of \$33.33 per biweekly pay period. If an

eligible employee is on unpaid leave or unpaid status for a period of one (1) full pay period or more, the employee will not receive the uniform allowance for that pay period(s).

5.3 Shift Differential. Eligible employees, as defined herein, regularly assigned to work a swing shift, shall be paid a shift differential of \$2.25 per hour for each eligible hour, as defined herein, to the nearest fifteen (15) minutes, of work performed. Eligible employees, as defined herein, regularly assigned to work a graveyard shift shall be paid a shift differential of \$2.50 per hour, as defined herein, to the nearest fifteen (15) minutes of work performed.

5.3.1 Eligibility and Application. To be eligible for payment of shift differential, an employee must be assigned to an on-going, regular shift of eight (8) hours or more which is regularly scheduled to start between the hours of:

- a) 2:00 p.m. and 11:59 p.m. (i.e. swing shift), or
- b) 12:00 midnight and 5:59 a.m. (i.e. graveyard shift)

Employees assigned to work an on-going, regular shift of twelve (12) hours or more at the Regional Wastewater Facility (RWF), which is regularly scheduled to start between the hours of 6:00 a.m. to 6:00 p.m. shall be paid a shift differential of \$2.25 per hour for each eligible hour, to the nearest fifteen (15) minutes, of work performed between the hours of 2:00 p.m. and 6:00 p.m.

If the employee's shift starts within the time period defined above and the employee works a minimum of two (2) hours within that time period, the employee shall be compensated with shift differential for the entire shift.

If the employee's shift starts within the time period defined above and the employee works less than two (2) hours within that time period, the employee shall be compensated with shift differential for the number of hours of work actually performed within that time period.

5.3.2 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

5.4 Working in a Higher Classification.

5.4.1 Upon specific written assignment by the Department Director or designee, an employee who is not on probation may be required to perform the duties of a higher classification. Such assignments shall be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. Once an employee reaches the six (6) month maximum in a specific higher class assignment due to a vacancy, the employee shall not work in the same higher classification for at least six (6) months. The six month limitations do not apply to the temporary absence of the regularly appointed employee.

5.4.1.1 Employees specifically assigned in writing to duties of a higher classification, pursuant to section 5.4.1, shall be compensated at the rate in the salary range of the higher class which is at least five percent (5%) higher in the salary range schedule than the rate received by the

employee in the employee's present class provided, however, that the employee shall not receive any compensation unless the assignment is for at least 50% or more of the scheduled shift or longer. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification.

If the assignment is for at least 50% or more of the shift and the employee completes the assignment, they shall be compensated for the entire shift provided that the employee works the remainder of the shift and does not take paid or unpaid leave. If, as provided above, the employee is eligible for compensation at the higher rate, and following the higher class assignment, the employee takes paid or unpaid leave, the employee shall only be compensated at the higher rate for hours actually worked in the higher class.

5.5 Health Insurance.

- 5.5.1 All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).
- 5.5.2 **Medical Insurance Provider with the Second Highest Overall Employee Enrollment.** The City pays ninety percent (90%) of the cost of the lowest priced Non-Deductible HMO Co-Pay Plan of the medical insurance provider with the second highest overall enrollment for the employee or the employee and dependent coverage, and the employee pays ten percent (10%) of the full premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible Co-pay Plan of the medical insurance provider with the second highest overall employee enrollment.
- 5.5.3 **Medical Insurance Provider with the Highest Overall Employee Enrollment.** The City will pay eighty-five (85%) of the full premium cost of the lowest priced Non-Deductible HMO Co-Pay Plan of the medical insurance provider with the highest overall employee enrollment for the employee or the employee and dependent coverage, and the employee pays fifteen percent (15%) of the full premium cost of the lowest priced Non-Deductible Co-Pay Plan of the medical insurance provider with the highest overall employee enrollment.
- 5.5.4 If the employee selects a plan other than the lowest priced Non-Deductible HMO Co-Pay Plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO Co-Pay Plan.
- 5.5.5 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.
- 5.5.6 **Default Healthcare Plan.** New full-time employees and current employees not previously eligible to receive benefits who are hired into a full-time benefits eligible position and who do not sign up for a healthcare plan within thirty (30) calendar days from their hire date, will be automatically enrolled in the lowest cost HMO Deductible plan offered by the medical insurance provider with the

second highest overall employee enrollment at the time the employee is automatically enrolled.

- 5.6 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans. All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).

The City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay 95% of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay 5% of the full premium cost for the selected plan.

- 5.6.1 Each eligible, full-time employee and dependents shall receive a lifetime maximum of \$2,000 Orthodontia coverage in the Delta Dental Plan.
- 5.6.2 Each active, eligible, full-time employee and eligible dependents that are enrolled in the Delta Dental Plan shall receive annual maximum coverage of \$1500.00.
- 5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

- 5.7 Payment-in-lieu of Health and/or Dental Insurance Program. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu. Effective as soon as practicable in Fiscal Year 2024-2025, the payment in lieu amount for employee only will be adjusted as provided in Section 5.6.5.2.

- 5.7.1 Employees who qualify for and participate in the payment-in-lieu health and/or dental insurance program will receive the following per pay period:

Health Insurance Tier	Health-in-Lieu	Dental-in-Lieu
Employee	\$102.00	\$6.65
Employee plus spouse/domestic partner	\$147.87	\$13.30
Employee plus Child(ren)	\$129.39	\$11.64
Family	\$221.84	\$19.95

A City employee who receives health and/or dental coverage as a dependent of another City employee or retiree shall be eligible for the employee only coverage for the payment-in-lieu of health and/or dental program.

- 5.7.2 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek of less than thirty-five (35) regular work hours per week or unpaid leave and have alternate group health and/or dental coverage. To qualify, a new employee must attest that the employee and all covered dependents have or will have minimum essential coverage under an alternative group medical/dental plan and an employee who

has a life qualifying event must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

- 5.7.3 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period or within 30 days of a qualifying event as defined in the Human Resources Benefits Handbook occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.
- 5.7.4 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek of less than thirty-five (35) regular work hours per week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.
- 5.7.5 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.
 - 5.7.5.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Reenrollment in the plan shall be in accordance with the carriers' enrollment procedures.
 - 5.7.5.2 Dental Insurance. To enroll in a City dental insurance plan following the loss of alternative coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.
- 5.8 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited for the time worked, or for three (3) hours at the appropriate rate (1.5), whichever is greater. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three hours, after which time the employee would be eligible for additional pay, but only for actual hours worked.
- 5.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one (1) hour compensation at the appropriate rate (1.5) for each eight (8) hour shift

the employee performs standby duty. In the event that the employee is called back to work, they shall be entitled to the compensation provided by Section 5.8 above, in addition to the one-hour of standby compensation for that eight (8) hour shift.

5.9.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.

5.9.2 Employees who do not return to work but who are contacted by telephone, pager, or computer shall be paid for actual time worked at the appropriate rate of pay.

5.10 Jury Duty. Each full or part-time employee who is eligible for benefits who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive the regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:

5.10.1 Employees assigned to a day shift. In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.

5.10.1.1 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.

5.10.1.2 In those cases in which the employee is not released by the court until after 1:00 p.m. the employee need not return to work. The employee receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.

5.10.2 Employees assigned to a swing or graveyard shift who are called for jury selection. Employees assigned to a swing or graveyard shift, as defined in Section 5.3 of this Article, if released by the court at 1:00 p.m. or earlier shall report for duty at the scheduled beginning of the employee's assigned shift except for Regional Wastewater Facility employees assigned to 12-hour shifts. Regional Wastewater Facility employees assigned to a 12-hour swing or graveyard shift who are released by the court at 1:00 p.m. or earlier shall report to work no later than 10:00 p.m. instead of at the scheduled beginning of the employee's assigned shift.

5.10.2.1 In the event the employee is required to report for jury duty the following day, the employee will be excused without loss of compensation two (2) hours before the end of the scheduled shift but no earlier than 10:00 p.m. for employees assigned to a swing shift or 6:00 a.m. for employees assigned to a graveyard shift.

5.10.2.2 Employees assigned to a swing or graveyard shift who are not released by the court at 1:00 p.m. or earlier shall not be required to report for duty on the scheduled shift on that day and shall receive a full day's pay, less jury fee.

5.10.2.3 In the event an employee is released by the court at 1:00 p.m. or earlier and fails to report for duty as required above, such employee shall not receive any compensation from the City for that shift but may retain any jury fee received from the court.

5.10.3 Employees assigned to a swing or graveyard shift who are selected to sit on a jury. An employee who is assigned to a swing or graveyard shift who is impaneled on a jury shall be temporarily assigned to a day shift of 8:00 a.m. to 5:00 p.m., Monday through Friday. This temporary schedule change shall not apply to employees who are called to jury selection, unless they are impaneled on a jury.

5.10.3.1 The temporary schedule change shall begin on the first day of the workweek following jury empanelment. Until the temporary shift change takes effect, the provisions applicable to jury selection for employees on alternate shifts shall apply. When an employee is temporarily assigned to a day shift of 8:00 a.m. to 5:00 p.m. Monday through Friday, the provisions applicable to jury duty for employees on regular Monday through Friday day shifts shall apply.

5.10.3.2 Upon completion of jury duty, the employee will resume their normal work schedule on the first day of the workweek following release from jury duty.

5.11 Witness Leave.

5.11.1 Each employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive their regular salary during the time of service as a witness under subpoena, less any and all witness fees which may be received by the employee. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City. An employee subpoenaed as a witness shall not in and of itself constitute being a party to the action.

5.11.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be credited with overtime for the time spent in court, or for two hours, whichever is greater, less any and all witness fees which may be received by the employee. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City. An employee subpoenaed as a witness shall not in and of itself constitute being a party to the action.

5.11.3 Upon service of subpoena, an employee shall immediately advise their Department Director or designee of the time when the employee is required to appear in Court.

5.12 Career Development. The City is committed to assisting employees with career growth and development and agrees to the following:

5.12.1 Tuition Reimbursement Program. The City will reimburse each full-time employee 100% of expenses incurred, up to \$1000.00 per fiscal year, for registration, tuition and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Section 4.3.1 of the City Policy Manual outlines additional details of the program. Of the \$1000.00 amount, up to \$600.00 may be used for non-college accredited courses, workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee.

5.12.1.1 Part-Time Benefited Employees – Tuition Reimbursement Program. The City will reimburse each eligible part-time benefited employee 100% of expenses incurred, up to the maximum amounts per fiscal year listed below. Eligible expenses shall be limited to registration, tuition, and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Section 4.3.1 of the City Policy Manual outlines additional details of the program. Of the eligible amount indicated in the chart below, a prorated amount may be used for non-college accredited courses, workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee. The maximum amounts for eligible benefited employees are based on the employee's established benefit category as follows:

<u>Regularly Scheduled Hours Per Week</u>	<u>Maximum Reimbursement for Part-Time Benefited Employees</u>	<u>Maximum Reimbursement for Part-Time Benefited Employees for non-college accredited courses and others as listed above.</u>
<u>35-39.9 hours</u>	<u>\$1,000.00</u>	<u>\$600.00</u>
<u>30-34.9 hours</u>	<u>\$750.00</u>	<u>\$225.00</u>
<u>25-29.9 hours</u>	<u>\$625.00</u>	<u>\$190.00</u>
<u>20-24.9 hours</u>	<u>\$500.00</u>	<u>\$150.00</u>
<u>Less than 20 hours</u>	<u>\$0.00</u>	<u>\$0.00</u>

5.12.2 Brake, Lamp and Smog Licenses. The City encourages all employees in the Mechanic series to receive Brake, Lamp and Smog licenses. If an employee successfully passes an exam and receives any of the above listed licenses, the City agrees to reimburse the employee for the cost of the exam. The City also agrees to provide reasonable in-house training and/or mentoring for employees who are interested in receiving these licenses.

- 5.12.3 Employability. The City strives to maximize the productivity and full potential of all City employees by providing career development opportunities within the organization. The City will continue these opportunities as well as endeavor to retrain and in-place employees in the event of job changes as a result of streamlining work processes, advances in technology and/or the elimination of current work assignments.
- 5.13 Use of Private Automobile- Mileage Reimbursement. Each employee of the City who is authorized by the City Manager, or designee, to use their private automobile in the performance of the duties of their position, shall be entitled to receive and shall be paid as a travel allowance for such use of the employee's private automobile a mileage reimbursement rate consistent with the City's rate.
- 5.14 Protective Clothing.
- 5.14.1 The City agrees to provide a voucher for the purchase of protective footwear, which may include sole inserts, for up to \$300 for employees in Fiscal Year 2024-2025 when it is determined by the Director of Human Resources or designee that protective footwear is required for the employee. Effective Fiscal Year 2025-2026, the voucher shall be up to \$325.00. Protective footwear shall meet established Occupational Safety and Health Administration's (OSHA) standards, current American National Standard for Personal Protection-Protective Footwear standards and requirements as determined by the City Safety Officer or designee. The City will replace protective footwear as needed, but no more than once per fiscal year. If necessary, the City may replace the employee's safety shoes if they are damaged beyond use due to work related usage as determined by the Department's Safety Officer, or designee, or the City's Safety Officer. An individual may select an approved style that is more expensive than the City maximum by paying the difference. Employees in classifications who are entitled to receive a uniform allowance as provided in Article 5.2 above are not eligible to receive reimbursement for protective footwear under this provision
- 5.14.2 The City shall provide laundered painter coveralls for full-time employees holding positions in the classifications listed below:
- | | | | |
|------|----------------------|------|-----------------------|
| 3121 | Apprentice Painter I | 3122 | Apprentice Painter II |
| 3123 | Painter | 3124 | Painter, W.P.C.P. |
| 3125 | Sign Painter | 3126 | Senior Painter |
- 5.14.3 Such coveralls shall be and shall remain the property of the City of San Jose.
- 5.14.4 The City shall provide suitable protective rain gear for employees holding positions in classifications listed below when such employees are required to work in the rain.
- | | | | |
|------|-----------------------------|------|----------------------------------|
| 2415 | Parking Control Officer | 3410 | Groundskeeper |
| 2452 | Parking Control Officer PT | 3411 | Groundswoker |
| 2453 | Sr. Parking Control Officer | 3412 | Park Maintenance Repair Worker I |
| 3108 | Maintenance Assistant | 3413 | Park Maint. Repair Worker II |

3109 Maintenance Assistant (PT)	3414 Gardener
3113 Maintenance Worker I	3611 Wastewater Operator Trainee
3114 Maintenance Worker II	3612 Wastewater Operator I
3115 Sr. Maintenance Worker	3621 Wastewater Attendant
3162 Air Conditioning Mechanic	3622 Wastewater Mechanic I
3163 Sr. Air Conditioning Mechanic	3623 Wastewater Sr. Mechanic I
3238 Facility Repair Worker	3632 Water Systems Technician
3239 Sr. Facility Repair Worker	3633 Sr. Water Systems Technician
3321 Apprentice Mechanic	3641 Asst Hvy Dsl Equip Op Mechanic
3322 Sr. Mechanic	3652 Wastewater Operator II
3323 Mechanic	3653 Wastewater Operator III
3343 Heavy Equipment Operator	3672 Wastewater Mechanic II
3345 Sr. Heavy Equip. Operator	3673 Wastewater Sr. Mechanic II
3409 Groundskeeper PT	

- 5.14.5 The City shall provide five (5) shirts to full-time employees selected by the City in classifications specified in Section 5.14.4 above. Such shirts shall be cleaned and maintained at the employee's expense and shall be replaced by the City as required due to wear and deterioration through normal use.
 - 5.14.6 If, during the term of this agreement, it is deemed that work shirts are necessary for additional classifications, representatives from the City and union will meet to discuss appropriate implementation.
 - 5.14.7 All such items provided pursuant to provisions of this Subsection 5.14 shall be and shall remain the property of the City.
- 5.15 Bilingual Pay. To be eligible for a bilingual pay premium pay, an employee must meet at least one of the eligibility criteria in 5.15.1 or 5.15.2 below.

Each department is responsible for ensuring that employees receiving a bilingual pay premium pay meet the requirements set forth herein.

Each full-time employee who meets the eligibility requirements shall be compensated for performing oral communication, sign language duties, or written and oral translation duties at the rate of sixty dollars (\$60) per biweekly pay period for each pay period actually worked.

- 5.15.1 The employee is or was selectively certified for a position which has been approved by the Director of Human Resources, or designee, for selective certification based on bilingual ability and is currently assigned to such position, or
- 5.15.2 The duties currently assigned to an employee and/or currently being performed by an employee requires utilization of a non-English language on a regular basis.

- 5.15.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to provide advanced notice to the Union, pursuant to Article 2.
- 5.15.4 In the event an eligible employee is on a paid or unpaid leave of absence, for a period of one full pay period or more, the appropriate reduction in the above-mentioned compensation shall be made.
- 5.15.5 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Human Resources. The written decision of the Director of Human Resources shall be final, with no process for further appeal.
- 5.15.6 If an employee who receives bilingual pay refuses to provide interpretation or translation services for which they are certified, the employee shall no longer be eligible to receive bilingual pay. This determination shall be made by the City Manager or designee in consultation with the Department Director.
- 5.15.7 Employees receiving bilingual pay may be periodically required to re-certify their bilingual eligibility in order to continue receiving this premium pay.
- 5.16 Life Insurance. The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.
- 5.17 Meal Allowance. In the event an employee is assigned to work sixteen (16) or more consecutive hours, the City will provide the employee \$10.00 as a meal allowance.
- 5.18 Brake, Lamp and Smog Certifications Incentive. An employee in the Mechanic classification (3323) who obtains a brake, lamp and smog certification shall be eligible for a one-time incentive of \$250.00 upon providing proof of all three (3) certifications. An employee shall be eligible for the incentive only once in their employment with the City.
- 5.19 Class A/B License Pay. Employees who are in positions within classifications in which only certain positions are designated as requiring Class A or B license as a condition of employment shall be eligible for a \$75 per pay period premium pay. Specific positions within a classification that require a Class A or B license will be determined by the Department Director or designee. Those employees within classifications where a Class A or B license is required of every position in the class are not eligible for the premium pay.
- 5.20 Protective Prescription Safety Glasses. The City agrees to reimburse eligible employees who require the use of prescription lenses and are in positions that require the use of protective safety glasses for the purchase of protective prescription safety glasses for up to \$200.00 for full-time employees when it is determined by the Director of Human Resources, or designee, that protective prescription safety glasses are required. The City will replace protective prescription safety glasses as needed, but no more than once per calendar year. An individual may select an approved style that is more expensive than the City maximum by paying the difference.

- 5.21 Annual Performance Appraisals. Employees shall not receive an automatic salary step increase if they have an Annual Performance Appraisal with an overall rating below that of “Meets Standard” dated within twelve (12) months prior to the salary step increase.
- 5.22 Backflow Prevention Assembly Tester Certification Incentive. Effective as soon as practicable, employees who possess a Backflow Prevention Assembly Tester Certification, and perform backflow prevention assembly testing as part of their regular duties, shall be eligible for a \$50 incentive per bi-weekly pay period, subject to the approval and determination of the Department Director or designee. Employees in classifications that require a Backflow Prevention Assembly Tester Certification as a minimum qualification are not eligible for the Backflow Prevention Tester Certification incentive.
- 5.23 Qualified Applicator Certification Incentive. Effective as soon as practicable, employees who possess a Qualified Applicator Certification, and perform duties requiring a Qualified Applicator Certification as part of their regular duties, shall be eligible for a \$50 incentive per bi-weekly pay period, subject to the approval and determination of the Department Director or designee. Employees in classifications that require a Qualified Applicator Certification as a minimum qualification are not eligible for the Qualified Applicator Certification incentive.
- 5.24 Crane Certification Incentive. Effective as soon as practicable, employees who possess a crane certification to operate a crane over 25 feet or 15,000 pounds, and perform duties that regularly require the crane certification, shall be eligible for a 5% crane certification incentive in addition to their base salary, each bi-weekly pay period. The employee must have a valid crane certification at all times in order to be eligible for the crane certification incentive. The crane certification incentive is subject to the approval and determination of the Department Director or designee. Employees in classifications that require this crane certification as a minimum qualification are not eligible for the crane certification incentive.
- 5.25 Overpayments of Compensation. When the City determines an overpayment has been made to an employee, it shall notify the employee of the overpayment and afford the employee an opportunity to respond prior to commencing recoupment actions. The City will endeavor to reach mutual agreement with the employee regarding repayment terms, which may be in lump sum cash payment(s) or installment(s) through payroll deduction(s). Absent mutual agreement on a method of reimbursement within 30 days, the City shall proceed with recoupment via Payroll deductions over a number of pay periods equivalent to the term of overpayment, unless the maximum deduction per pay period is insufficient to repay the balance of the overpayment. In this case, the payments shall continue for as many pay periods is necessary to repay the balance of the overpayment. In no event shall amounts deducted from payment of salary or wages exceed 15% of the employee’s net disposable earnings.
- 5.25.1 An employee who separates from City employment prior to full repayment of the amount owed to the City shall have any money owed to the City withheld from their final paycheck(s). If the amount of money owed upon separation is insufficient to provide full reimbursement to the City, the City shall have the right to exercise any and all other legal means to recover the additional amount owed.

ARTICLE 6 HOURS OF WORK AND OVERTIME

- 6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 6.3 The normal work schedule shall be 40 hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.
- 6.3.1 It is understood and agreed that specific employees may be assigned a different work schedule as a result of a transfer, promotion, shift rotation, or other changes made pursuant to this agreement or applicable ordinances or resolutions. Employees who work alternating shifts, i.e. swing shift, graveyard shift, weekends, may request review of the methodology and procedures to assign employees to particular shifts. The request for review will be made through the union, to the employee's department and to the Office of Employee Relations. The department and Office of Employee Relations will arrange and participate in meetings with the union for the purpose of discussing changes that will meet the operational needs of the City and the needs of the employee.
- 6.3.2 When an employee's work schedule is changed involuntarily, the employee will be given fourteen (14) calendar days advance notice prior to the implementation of the revised schedule except when there are extenuating circumstances as determined by the City. This provision does not apply to any schedule changes that may result as part of the Return-to-Work or accommodation process, or compliance with this agreement. Nothing in this provision shall preclude an employee from agreeing to begin the revised schedule in less than fourteen (14) calendar days.
- 6.3.3 A department may change the workday or work schedule in a section including the adoption of a four day, ten hour per day schedule, or, at the Regional Wastewater Facility, a 12-hour shift schedule, if it determines such schedule is in the City's best interest. Any employee who initiates or is placed on an alternative work schedule after March 31, 1993 will be subject to the terms and conditions contained in Article 32 of this agreement.
- 6.3.4 The Union may discuss with a department specific proposals for scheduling flexibility within the context of the regular 40-hour workweek. Departments may adopt such plans on a trial or permanent basis during the life of this contract.
- 6.3.5 The parties agree to re-open negotiations for the purpose of discussing work rule and compensation changes associated with alternate shifts at the Regional Wastewater Facility.
- 6.4 Employees shall be given two (2) consecutive days off, even though the days off are in different workweeks, except, where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 6.5 The Department Director, or designee, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and workweek for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.

- 6.5.1 Part-time employees are only eligible for overtime pay if the employee works over 40 hours in one week.
- 6.5.2 If a part-time employee is scheduled and reports to work for a shift which is then cancelled, the employee shall, at the City's discretion, either work a minimum of two (2) hours or be credited with two (2) hours of work at the employee's straight time pay rate. If the employee is notified prior to the start of the shift that the shift is canceled, the employee is not entitled to the two (2) hour minimum.
- 6.5.3 Before hiring additional part-time employees, the City will offer additional hours of work to existing part-time employees who have the skills and experience to perform the work. The City will develop a process to distribute the hours of work among those existing part-time employees.

Nothing herein contained, however, shall be construed to limit the right of the Department Director or designee, to determine the days of the week and hours of each day when such part-time employee shall be required to work. Further, nothing herein contained, shall limit the right of the Department Director or designee to determine the days of the week and hours of each day when any such part-time non-benefited employee shall be required to work, or whether such part-time non-benefited employee shall work at all.

This section shall not be construed to require the City to offer a part-time employee any additional hours of work if it would result in the part-time employee being eligible for overtime compensation at 1.5 times their regular rate of pay or any other additional benefits that said employee is not otherwise eligible.

- 6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off, with the exception of holiday leave, shall not be considered time worked for the purpose of calculating eligibility for overtime.
 - 6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.
 - 6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Regional Wastewater Facility will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Regional Wastewater Facility and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.
- 6.7 Except as provided in 6.6.1, overtime worked shall be compensated at the 1.5 rate. An employee assigned to work overtime may elect to either be paid for such overtime worked or be credited with compensatory time, except under the following circumstances:
 - 6.7.1 The employee's choice of compensatory time would interfere with a department's ability to recover the cost of the overtime;

- 6.7.2 The employee's choice of pay cannot be accommodated within the department's overtime budget;
- 6.7.3 If the work is being performed for another City department or outside agency, the employee's department may choose to compensate overtime with pay or compensatory time, provided the employee is notified of the method of payment prior to working the overtime; or
- 6.7.4 If the employee fails to request an election during the pay period in which the overtime is worked.

If the employee is not allowed to make the election to be paid for overtime or be credited with compensatory time under one of the circumstances cited above, the employee shall be informed of the reason for not being allowed such choice. The explanation shall be provided before the overtime is worked.

Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off unless emergency circumstances necessitate cancellation of the time off. In such event, the employee will remain credited with the time canceled.

- 6.8 Compensatory time credited to an employee, and which is not taken within 26 pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 6.9 Notwithstanding any other provision of this Section to the contrary, the Department Director, or designee, may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire department or to a specified section(s) of a department. The announcement will also specify a date by which time each affected employee must elect to either:
 - a) be paid for all accrued, unused compensatory time, OR;
 - b) be paid for all but 24 hours of such accrued, unused compensatory time, OR;
 - c) retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.9.
- 6.10 Any employee not making an election will retain their compensatory time, subject to other provisions of this Section.
- 6.11 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time earned from and after July 1, 1968, shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the Will or the administrator of the estate.
- 6.12 A 15-minute paid rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

An unpaid meal break period of at least 30 minutes will be provided as near as possible to the middle of the shift, for any regularly scheduled shift of six (6) hours or longer, if practical. If no meal break is provided, the supervisor shall either adjust the end of the workday or pay the employee at the appropriate rate for the time worked.

ARTICLE 7 DUES DEDUCTION

- 7.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a Unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws, provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.
- 7.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Union as regular monthly dues.
- 7.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty one (21) days following the pay period in which the deductions were made.
- 7.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer or designee, on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 7.5 If, through inadvertence or error the City fails to make the authorized deduction or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 7.6 It is expressly understood and agreed that the Union will refund to the employee any Union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 7.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 7.8 The City shall provide at no charge to the Union, a monthly printout listing bargaining unit employees by department and position, worksite location (to the extent possible), full-time equivalency, and employee address. The City shall also provide at no charge to the Union, a monthly printout listing employees who have experienced a change in

active employment status. The Union agrees that such information will be treated in a confidential manner.

ARTICLE 8 MANAGEMENT RIGHTS

- 8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or the City Charter including, but not limited to: The right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.
- 8.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Union of Operating Engineers, Local No. 3 representing such employee.
- 8.3 The City has the absolute right to require that an employee return to assigned duties in the time of an emergency or to comply with Civil Defense requirements. The City will not, during the term of this agreement enforce the Civil Service rule that City employees reside within 30 air miles of First and Santa Clara Streets.
- 8.4 Whenever the City changes work rules or workplace policies, or issues new work rules or workplace policies, the Union will be given written notice at least ten (10) working days, absent emergency, before the effective date of the rule or policy. This notice is provided in order that the Union may request to discuss or request to meet and confer regarding the rule or policy with the City before it becomes effective.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to

meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

ARTICLE 10 FULL FAITH AND CREDIT

10.1 It is understood and agreed that:

10.1.1 Participation by any employee in a unit represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for any person, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes the services provided by employees in the representation unit, or the failure to perform lawfully required work, shall subject the employee to disciplinary action up to and including discharge.

10.1.2 If the Union, its officers or its authorized representatives violate provision 10.1.1 above or tolerate the violation of provision 10.1.1 above and after notice to responsible officers or business representatives of the Union such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 10.1.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer or designee, may suspend or cancel any or all payroll deductions payable to or on behalf of members of such Union, and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer or designee shall not be subject to review under the provisions of Article 12 entitled Grievance Procedure.

ARTICLE 11 SAFETY

11.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.

11.2 An employee who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try to resolve it at that level. The employee may at any time request that a union representative and an OE#3 Safety Officer be present for any part of the process.

11.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may report the unsafe conditions to the Department Director or designee or the Department Safety Officer and try to resolve it at that level.

11.4 If the employee is not satisfied with the response of the Department Director or designee or the Department Safety Officer, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA

regulations. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform.

- 11.5 No provisions of this Article shall be subject to the grievance procedures of this Agreement. If the Union is not satisfied with the City's determination, the Union can request to meet with the Office of Employee Relations to discuss the City's determination.

ARTICLE 12 GRIEVANCE PROCEDURE

- 12.1 Any dispute between the City and an Employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the Union representative may file a grievance on behalf of such employee(s).
- 12.2 Grievances involving Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.
- 12.3 Alternative to the Grievance Procedure. As an alternative to the formal grievance procedure, the City and the Union may by mutual agreement meet and attempt to informally resolve problems which arise involving contract interpretations and other matters affecting the relationship between the City and the Union. Agreement to use the alternative to the grievance procedure must comply with timelines set forth in this article. A grievance must be presented within the timelines set forth in Articles 12.4.2 and 12.5.1. However, once the parties mutually agree to informally resolve problems, the formal grievance procedure timelines are tolled pending the informal resolution process. If, in an attempt to informally resolve issues, the parties discuss matters that are not otherwise subject to the grievance procedure, such matters shall not be eligible to be grieved under the grievance provisions of this MOA.
- 12.4 Step I.
- 12.4.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor.
- 12.4.2 The grievance must be presented within twenty-one (21) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

12.4.3 If the employee is not satisfied with the reply of the immediate supervisor, the employee may appeal the grievance to 12.5 - Step II.

12.5 Step II.

12.5.1 If the employee desires to appeal the grievance to 12.5 - Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Department Director or designee, within five (5) working days following receipt of the immediate supervisor's oral reply.

12.5.2 The written grievance shall contain a complete statement of the grievance, the alleged facts upon which the grievance is based, the reasons for the appeal, the section or sections of the Memorandum of Agreement relied upon or claimed to have been violated, and the remedy requested. The grievance shall be signed and dated by the employee. If an employee is unavailable to sign the grievance, the Business Representative may sign on behalf of the employee. In that event, the grievance must include the name of the employee on whose behalf the grievance is being filed.

12.5.3 The Department Director, or designee, may arrange a meeting between the Department Director or designee, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to 12.5 - Step II.

12.5.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to 12.6 - Step III.

12.6 Step III.

12.6.1 If the employee desires to appeal the grievance to 12.6 - Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer or designee, within five (5) working days following receipt of the written decision at 12.5 - Step II. If an employee is unavailable to sign the grievance, the Business Representative may sign on behalf of the employee. In that event, the grievance must include the name of the employee on whose behalf the grievance is being filed.

12.6.2 Within ten (10) working days after receipt of the appeal to 12.6 - Step III, the Municipal Employee Relations Officer or designee, shall schedule a meeting with the employee, the appropriate Union representative, the Department Director or designee, to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within five (5) working days following the meeting.

12.6.3 If the employee is not satisfied with the decision of the Municipal Employee Relations Officer or designee, the appropriate Union representative may appeal the grievance to 12.7 - Step IV - Arbitration.

12.7 Step IV.

- 12.7.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer or designee, in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at 12.6 - Step III.
- 12.7.2 Within fourteen (14) calendar days following receipt of the notice of appeal to 12.7, Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues each party will prepare its statement of the issue or issues, and submit the separate statement of issue or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue or issues are.
- 12.7.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Any costs associated with the mutually agreed upon joint request for a list of persons qualified to act as arbitrators from the State of California Mediation and Conciliation Service shall be divided equally between the parties. The City will process the joint request after receiving the Union's share of the cost for obtaining the list.
- 12.7.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one name remains, and that person shall be the arbitrator.
- 12.7.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues involved.
- 12.7.6 The decision shall be sent to the Municipal Employee Relations Officer or designee, and to the appropriate representative of the Union.
- 12.7.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 12.7.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this agreement to the specific facts involved and to interpret only applicable provisions of this agreement.

12.7.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

12.8 Designated Job Representative.

12.8.1 The City shall recognize no more than 17 Job Representatives who are properly designated by the Union for such work places or areas or groups of employees as shall be approved in writing by the Municipal Employee Relations Officer or designee.

12.8.2 Such designated Job Representatives shall be responsible for maintaining the bulletin board areas which are assigned for the exclusive use of the Union and they shall have during working hours, in urgent matters, the right to make reasonable telephone calls to the Business Representative of the Union for the purpose of reporting breaches of the Memorandum of Agreement or working conditions, except that they shall not have the right to stop any work nor to tell any employee that they cannot work on a particular assignment nor shall they conduct any Union business during working hours except as otherwise provided by provisions of this Agreement or as may be mutually agreed to by the parties.

12.8.3 No more than four (4) of the Job Representatives referenced in Section 12.8.1 may be designated as Chief Stewards. Chief Stewards shall be selected from the following three (3) departments and shall not exceed one (1) designation per department: Department of Transportation, General Services and Environmental Services. One (1) at large Chief Steward may also be designated by the Union for Parks, Recreation and Neighborhood Services issues.

12.8.3.1 Either one (1) designated Chief Steward or one (1) regular steward or except where otherwise noted below, up to two (2) designated representatives, shall be authorized release time from regular City duties to attend the following functions:

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings
- To attend Benefit Review Forum meetings (up to two (2) designated representatives.)
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations (up to two (2) designated representatives.)
- To attend meetings scheduled by the City Manager, or designee, when attendance is requested.

OE#3 shall notify the Office of Employee Relations with the name of the attending Chief Steward or regular steward at least seven (7) calendar days prior to the function, or as early as practical.

- 12.8.4 Release Time for Chief Steward and Job Representative Training. The Chief Steward and Job Representatives shall be granted a maximum of eight (8) hours paid release time during each calendar year to participate in training sessions related to the provisions of this agreement. The training shall be jointly conducted by the Union and City representatives according to an outline of such training activities to be submitted by the Union to the Office of Employee Relations for approval a minimum of 21 calendar days prior to the training session.
- 12.8.5 The City agrees to provide up to two (2) hours of paid release time every month for up to four (4) Stewards/Chief Stewards designated by the Union for the purpose of attending the Union's Stewards meeting only, if such a meeting is scheduled. A list of the designated employees shall be provided to the Office of Employee Relations at least five (5) working days in advance of the scheduled meeting.
- 12.8.6 Notification. The Union agrees to notify the Office of Employee Relations in writing of any changes of Chief Stewards or Job Representatives within 30 days of such change.
- 12.8.7 Release Time Restrictions. Release time shall not be provided for lobbying or political purposes. Release time is provided only to the extent that any employee is required or authorized to attend meetings, trainings or other authorized events during said employee's normal work schedule/hours. Employees are not entitled to receive overtime or regular compensation for attendance of meetings, trainings or other authorized events occurring outside of their normal work schedule/hours.
- 12.8.8 City Paid Union Release Time (URT). The designated bargaining unit representative(s) shall use the City Paid Union Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. Upon request by the City, the bargaining unit representative(s) shall provide the City with a general explanation of the business conducted when the URT code is used.

12.9 General Provisions.

- 12.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representative shall be kept to a minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.
- 12.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee or appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.

- 12.9.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provision of this Article, including arbitration, has been utilized.
- 12.9.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 12.9.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13 entitled Leaves of Absence, the employee shall file the grievance in writing at 12.4 - Step II within ten (10) calendar days following the date of separation.
- 12.9.6 Any of the time limits specified in 12.4 - Step I through 12.6 - Step III may be extended by written mutual agreement of the parties.

ARTICLE 13 LEAVES OF ABSENCE

- 13.1 A request for a leave of absence without pay shall be made in writing by the employee. The appointing authority or designee may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may, however, be extended not to exceed an additional six (6) months upon written request of the employee, subject to approval of the appointing authority or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by certified mail, return receipt requested, and shall be mailed no later than 30 days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled workday after the effective date of the cancellation, or on the first scheduled workday following the expiration of a leave, shall be considered a voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee.
- 13.3 Each employee who is granted a leave pursuant to the provisions of this Article, shall, upon return from leave, be entitled to the position within the classification held by the employee at the time the leave commenced.
- 13.4 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.
- 13.5 The employee is responsible for coordinating their return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the

supervisor to ensure that all necessary documents have been completed and steps have been taken.

- 13.6 For purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14 entitled Layoff.
- 13.7 Voluntary Separation From Employment. Any employee who is absent without notification to the Department Director or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary separation from employment unless the failure to report, as determined by the City, is due to extenuating circumstances beyond the control of the employee. An employee will be considered to be absent without notification pursuant to this Section, if notification is not provided prior to the commencement of the second consecutive shift.
- 13.8 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined by the City to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 14 LAYOFF

- 14.1 Order of Layoff. When one or more employees in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
- 14.1.1 Provisional employees in the order to be determined by the appointed authority.
- 14.1.2 Probationary employees in the order to be determined by the appointing authority.
- 14.1.3 Apprentice employees who are a part of an apprentice program, or employees in a trainee classification, in inverse order of seniority within the classification being reduced, or in a higher classification. In no case will a journey level employee be laid off before an apprentice employee. Nor will a journey level employee be required to move into an apprentice or trainee class.
- 14.1.4 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher classification.
- 14.1.5 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.
- 14.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least 30 calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.
- 14.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:

- 14.3.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 14.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Human Resources Director or designee. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the most recent period of employment. Adverse decisions of the Human Resources Director or designee, regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
- 14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 14.4 As used in this Article, the following words and phrases shall be defined as follows:
- 14.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
- 14.4.2 A lower class shall mean a class with a lower salary range.
- 14.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 14.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 14.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 14.6 Layoff Reinstatement Eligible List.
- 14.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority; i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class.

- 14.6.2 In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 14.6.3 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.6.4 Any person reinstated to a class which is the highest class to which the employee would have been entitled at the time of the layoff shall have their name removed from the Reinstatement Eligible List.
- 14.6.5 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three year period specified herein may request that their name be replaced on a Reinstatement Eligible List and such person's name may, in the sole discretion of the Human Resources Director or designee, be returned to the Reinstatement Eligible List.
- 14.6.6 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 15 BULLETIN BOARDS

- 15.1 The Union may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Union is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
 - 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer or designee.
- 15.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee, who shall have the sole and exclusive right to order the removal of any objectionable material.

- 15.4 The Municipal Employee Relations Officer or designee shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 15.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

16.1 Except as otherwise provided, each full-time employee who is on paid status before and after the holidays specified below shall be entitled to paid holiday leave on each of the following specified days, and on no other day, during the term of this Agreement:

- | | |
|------------------------|-------------------------|
| New Year's Day | Labor Day |
| Martin Luther King Day | Indigenous Peoples' Day |
| Lunar New Year | Veterans Day |
| President's Day | Thanksgiving Day |
| Cesar Chavez Day | Day After Thanksgiving |
| Memorial Day | Christmas Eve Day |
| Juneteenth | Christmas Day |
| Independence Day | |

16.2 Holiday Closure. The City Manager or designee may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off; however, it shall not be a requirement. Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees taking lost time during the closure shall continue to receive vacation, sick leave, city-wide and department seniority accruals. Eligible employees who have been employed with the City for less than 13 biweekly pay periods may use available vacation leave during the holiday closure.

16.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the preceding Friday.

16.4 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the Department Director or designee, may specify the days of the week and the hours of such days when any such employee in their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary they would be entitled to for that day at their

regular rate of pay, and in addition shall receive compensatory time off duty equal to 1.5 the number of hours which the employee works on said holiday.

16.5 For employees who were placed on an alternate work schedule prior to March 31, 1993, if any of said holidays falls on a full-time employee's regular day off, during which he is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned workday. The union office and the Office of Employee Relations have a complete list of said employees. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Head, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him multiplied by the employee's equivalent hourly rate.

16.5.1 Any employee who initiates or is placed on an alternate work schedule after March 31, 1993 will be compensated for holidays based upon an eight hour standard per holiday. Such employee shall be entitled to eight (8) hours of compensatory time off duty. The terms of this holiday compensation can be found in Article 32 of this agreement.

16.6 For employees on an alternate work schedule if any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to eight (8) hours of compensatory time off duty for full day holidays. Said compensatory time off duty shall be credited to such employees in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, additional compensation equal to the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

16.7 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition.

ARTICLE 17 VACATIONS AND PERSONAL LEAVE

17.1 Each eligible full-time employee shall be granted vacation leave with pay in accordance with the following:

17.1.1 Vacation Accrual. Employees shall accrue a leave of absence with full pay for vacation purposes, in the amount specified below for each cycle of 26 full biweekly pay periods preceding December 31st, or portion thereof, in each year of employment as specified.

<u>Years of Service</u>	<u>Hours of Vacation Per 26 Pay Period Cycles</u>
First 5 years	80 hours
6 th – 10 th year	120 hours
11 th – 12 th year	136 hours
13 th – 14 th year	152 hours
15 th – 24 th year	168 hours
25 th year or more	188 hours

Employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount. It is the responsibility of the employee to track for compliance with this provision.

17.1.2 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, after such termination, full pay for any vacation leave which may then have accrued.

17.2 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a workweek, unless the employee elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the length of time served by each employee within the relevant classification, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten (10) working days of the receipt of the written request.

17.3 Computation of Vacation Leave.

17.3.1 For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, compensatory time off, or any other paid leave, shall be deemed to be "time worked."

17.3.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation during the first 13 pay periods of employment even though some employees may, upon satisfactory completion of the initial probationary period, be entitled to additional vacation pursuant to the above.

17.4 Personal Leave. Each full-time employee shall be entitled to a total of thirty-two (32) hours per payroll calendar year, eight (8) hours of which is granted in recognition that City employees may wish to observe a personal holiday that is not observed by the City.

Such leave may be scheduled in fifteen (15) minute increments, at any time, subject to approval of the supervisor. Personal leave does not accrue. Any such leave not taken by the date of separation for employees separating during the year, or by the end of the last pay period in the calendar year for other employees shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than thirty-two (32) hours of Personal Leave in any given calendar year.

17.4.1 Full-time employees hired on or after July 1st shall be entitled to only sixteen (16) hours of personal leave in the first payroll calendar year in which they were hired.

17.4.2 An employee on a reduced work week schedule will receive personal leave as indicated in the chart below, even if the actual hours worked exceed that amount.

Scheduled Work Hours per Week	Benefit Level	Hours of Personal Leave
35-39.9 hours per week	100%	32 hours
30-34.9 hours per week	75%	24 hours
25-29.9 hours per week	62.5%	20 hours
20-24.9 hours per week	50%	16 hours
Less than 20 hours per week	Unbenefited	None

17.4.3 An employee who is promoted or demoted into an OE#3-represented classification will have the number of Personal Leave hours they receive upon promotion or demotion reduced on an hour-for-hour basis based on their usage of Personal Leave and/or Executive Leave within the same payroll calendar year.

ARTICLE 18 SICK LEAVE

18.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Only paid leave for holidays, vacation, compensatory time off, or other paid leave shall be considered as time worked for purposes of this section.

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments, illness in the immediate family as defined herein; or absence of an eligible female employee due to illness, injury or disability related to pregnancy or child-birth. Immediate family shall be limited to the eligible employee's mother, father, spouse, child or domestic partner registered with the Human Resources Department. Up to 48 hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandparent, grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother,

or stepchild or designated person as defined in the City Administrative Policy Manual 4.2.1 Leaves of Absence Policy.

- 18.1.2.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 19 Disability Leave, Part 19.2 or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Human Resources or designee, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.
- 18.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen (15) minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 18.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.
- 18.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee notifies their immediate superior, Department Director, or designee of intent to take sick leave, and of the reasons for taking sick leave, at least one-half hour prior to the commencement of the sick leave. If the employee fails to notify their immediate supervisor, Department Director, or designee at least one-half hour prior to the commencement of the sick leave, it can result in disciplinary action unless the failure is due to extenuating circumstances extenuating beyond the control of the employee. The City Manager or designee, however, may waive the requirement of such notice upon presentation of a reasonable excuse by such employee. Upon written

approval by the Office of Employee Relations and the OE#3 Union, departments may require an earlier call-in where work crew situations or other departmental needs require.

- 18.1.5 Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absence.
- 18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job-related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of eighteen (18) consecutive or for eighteen (18) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months. Any employee who is unable to return to work at the expiration of either of these periods of time shall be considered to have voluntarily separated from City service.
- 18.1.7 Accrued sick leave may also be used in accordance with the Catastrophic Illness provisions contained in this MOA.
- 18.1.8 When an employee has exhausted all of his/her sick leave, the employee may be allowed to use accrued vacation or compensatory time in lieu of unpaid time subject to the approval of the Department Director or designee and pursuant to 18.1.5 above, may require medical verification.
- 18.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.
- 18.3 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
 - 18.3.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
 - 18.3.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code (SJMC) Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.

18.3.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.

18.3.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code (SJMC) Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.

18.4 Effective June 22, 2013, for purposes of calculating a sick leave payout, employees' sick leave balances and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 22, 2013. Any sick leave usage after June 22, 2013, will come first from the sick leave balance accrued after June 22, 2013. An employee will continue to accrue sick leave after June 22, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$40 and his or her sick leave balance is 1000 hours on June 22, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 1000 hours and an hourly rate of no more than \$40. This will occur even if the employee has subsequently earned more than 1000 hours in sick leave or received a pay increase to an hourly rate higher than \$40. In this example, if the employee does not have available sick leave to use that was accrued after June 22, 2013, and uses sick leave and reduces their sick leave balance on June 22, 2013, to 800 hours, they will only be entitled to a sick leave payout of 800 hours, regardless of any sick leave accrued after June 22, 2013. This means that if sick leave payout hours are reduced by usage, they are not able to be re-established in the sick leave balance subject to payout.

18.5 Payout shall be determined as follows.

18.5.1 Payout shall be determined as follows: If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or estate shall be paid the equivalent of a specified percent of their hourly rate of pay as of June 22, 2013, multiplied by the total number of accumulated and unused hours of sick leave as of June 22, 2013 (minus any sick leave hours as of June 22, 2013, which were used), as follows:

18.5.2 Less than 400 hours - Hours accumulated as of June 22, 2013 x
50% of hourly rate as of June 22, 2013;

or 400 - 799 hours - Hours accumulated as of June 22, 2013 x
60% of hourly rate as of June 22, 2013;

or 800 - 1200 hours - Hours accumulated as of June 22, 2013 x
75% of hourly rate as of June 22, 2013.

18.6 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment before

June 22, 2013, with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) was the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD), resulted in providing employees 85% of their regular base salary. Effective April 27, 2014, employees were no longer be eligible to receive DLS.
- 19.2 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave (and the integration of Sick Leave as provided for in Article 18.1.2.3) including the integration of accrued vacation, compensatory time, and sick leave as provided in Article 19.3, with Workers' Compensation may be considered to have voluntarily separated from employment.
- 19.3 Integration. The integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.
- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

ARTICLE 20 MAINTENANCE OF MEMBERSHIP

20.1 Employee Rights.

20.1.1 The City and the Organization recognize the right of employees to form, join, and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

20.1.2 Accordingly, membership in the Organization shall not be compulsory. An employee has the right to choose to become a member of the Organization.

20.2 Employee's Obligation to Exclusive Representation.

The union will maintain records of employee authorizations for dues deductions. The Union will provide the City with information regarding the amount of dues deductions and certify the list of Union employees who have authorized dues deductions. The City will rely on the information provided by the Union in processing dues deductions for Union members and remit such dues or fees to OE#3. The Union will immediately notify the City of any changes in member dues deduction authorizations. The City will direct all inquiries from employees about union membership or dues deductions to the Union.

20.3 Hold Harmless. The Organization shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation

expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to membership dues.

ARTICLE 21 BEREAVEMENT LEAVE

21.1 Employees shall be entitled to use bereavement leave for up to five (5) days due to the death of a qualifying relative. The days of bereavement leave need not be consecutive. Each full time or benefited part-time employee shall be granted bereavement leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee, employee's spouse or employee's domestic partner. Due to the employee's regular work schedule, if the five (5) day entitlement exceeds forty (40) hours, employees may supplement the remaining time off using their accrued leave balances, including, but not limited to, sick leave. All leave must be used within three (3) months following the death of an applicable relative. Under extreme circumstances, the three (3) month requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.

- a) Parent/Step-Parent
- b) Child/Step-Child
- c) Spouse
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparent/ Step-Grandparent
- f) Great Grandparent/Step-Great Grandparent
- g) Grandchild
- h) Brother/sister/son/daughter in-law
- i) Domestic Partner

Each unbenefited part-time employee shall be granted unpaid bereavement leave for five (5) days and may use their accrued leave balances, including, but not limited to sick leave.

21.1.1 A domestic partner, as referenced in Section 21.1, must be registered with the Human Resources Department.

21.2 Anything herein above to the contrary notwithstanding, no such employee shall be entitled to compensation for Bereavement Leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such Bereavement Leave is required.

ARTICLE 22 SUPPLEMENTAL BENEFITS FOR PART-TIME EMPLOYEES

22.1 The normal work schedule for part-time employees shall be consistent with the position's designated benefit category as follows:

PT Employee Benefit Level	Work Schedule/Paid Hours
75%	30-34 hours per week or 1560-1768 per year

62.50%	25-29 hours per week or 1300-1508 per year
50%	20-24 hours per week or 1040-1268 per year
Part-Time Non-Benefited Employees	Less than 20 hours per week or less than 1040 per year

Any other provisions of this Agreement to the contrary notwithstanding, part-time employees assigned to regularly scheduled part-time benefited positions shall be eligible for and shall be granted benefits as specified in the appropriate sections of this MOA.

Benefit category designations made pursuant to the foregoing may be made or rescinded at any time at the discretion of the City Manager or designee, or the Department with the approval of the City Manager or designee.

Nothing herein contained, however, shall be construed to limit the right of the Department Director and of the City Manager or designees, as contained in Article 6, Section 6.5 of this Agreement, to determine the days of the week and hours of each day when any such part-time employee shall be required to work, or whether such part-time employee shall work at all, notwithstanding the above mentioned designation, scheduling and assignment.

22.2 Vacation Leave. During the term of this Agreement, and subject to the same restrictions, conditions and limitations applicable to full-time employees as provided in this Agreement except as otherwise hereinafter provided eligible part-time employees shall accrue and be granted leave of absence with full pay for vacation purposes on the following basis:

22.2.1 During the first 10,400 hours of employment, in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.03875 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.2 During the first 10,400 hours following the employee's first 10,400 hours, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.05875 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.3 During the first 4,160 hours following the employee's first 20,800 hours of employment, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.06625 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.4 During the first 4,160 hours following the employee's first 24,960 hours, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.07375 hours of vacation leave for each hour worked, exclusive of overtime.

22.2.5 During each hour following completion of 29,120 hours of employment, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.08125 hours of vacation leave for each hour worked, exclusive of overtime.

- 22.2.6 All part-time employees' maximum vacation accrual amount shall be 120 hours. Any part-time employee, who is at the maximum vacation amount of 120 hours, shall cease from accruing vacation until such time when employee uses enough vacation so that they are below their maximum vacation amount of 120 hours.
- 22.2.7 Vacation leave may be taken only after completion of 1,040 hours of employment and in an amount equal to but not more than the amount of vacation accrued.
- 22.2.8 Any such part-time employee shall be entitled to paid vacation leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.2.9 No eligible part-time employee shall be entitled to vacation leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.3 Sick Leave With Pay. During the term of this Agreement, sick leave with pay shall be granted to part-time employees in the amount of 0.04616 hours of sick leave for each hour worked, exclusive of overtime, and shall be subject to the same restrictions, conditions and limitations as are applicable to paid sick leave for full-time employees.
- 22.3.1 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and assignment made pursuant to this Article.
- 22.3.2 No part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact, the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 22.4 Holiday Benefits. Holiday leave with pay and compensation for time worked on a holiday shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees; provided, however, that each eligible part-time employee shall be eligible for holiday leave with pay for a number of hours each holiday based on the number of hours per week such part-time employee is indefinitely assigned to work in the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week schedule:

<u>Regularly Scheduled Hours Per Week</u>	<u>Hours of Leave With Pay Each Holiday</u>
20-24 hours	4 hours
25-29 hours	5 hours
30-34 hours	6 hours

22.4.1 Compensation for holidays shall be according to the above schedule regardless of the number of hours any eligible part-time employee may have been scheduled to work or would have been required to work on any designated holidays. If full-time employees are granted holiday leave with pay for a period of four (4) hours on a day that would be a regularly scheduled, full work day were it not for the holiday, eligible part-time employees shall receive holiday leave with pay in an amount equal to one-half of the hours shown above.

22.4.2 Each part-time employee who is not eligible to receive supplemental benefits provided by this Article and who is required to work on any of said holidays shall receive the salary that the employee would be entitled to for the hours worked on that day at the employee's regular rate of pay, and in addition, shall receive compensation in a sum equal to one-half times their hourly pay multiplied by the number of hours worked on such holiday, provided and excepting, however, that no part-time employee who is required to work on any of said holidays and who received a flat daily rate of pay, plus room and board shall be entitled to or shall be paid any compensation in addition to their regular flat daily rate of pay plus room and board.

22.5 Health and Dental Insurance Benefits. During the term of this Agreement, the City shall pay for each eligible part-time employee who is a subscriber to benefits provided for individual coverage, or for individual coverage plus coverage of dependents, under one of the health and dental insurance plans provided for full-time employees, sums of money equal to the percentage of the City's contribution for full-time employees for such individual coverage, or individual plus coverage of dependents, based on the number of hours per week such part-time employee is indefinitely assigned to work in their regularly scheduled part-time position. Such sums of moneys shall be determined in accordance with the following such hours per week and percentages:

City Contribution for P/T Employees Regularly Scheduled as Percentage of City Contribution:

<u>Hours Per Week</u>	<u>For Full-Time Employees</u>
20 - 24 Hours	50.0%
25 - 29 Hours	62.5%
30 - 34 Hours	75.0%

22.6 Shift Differential. Part-time employees indefinitely assigned to regularly scheduled part-time positions, as defined herein, who are regularly assigned to work a shift of three hours or more, regularly scheduled to start between the hours of 2:00 p.m. and 5:59 a.m., shall be paid a shift differential of \$2.50 per hour for each hour, to the nearest half hour, actually worked during such shift. Notwithstanding the provisions contained herein, such part-time employees who are regularly assigned to work a shift regularly scheduled to start between 12:00 noon and 1:59 p.m., shall be paid a shift differential of \$2.25 per hour commencing with the fifth hour worked on such shift. Except as required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

22.7 Bilingual Pay. Each eligible part-time benefitted employee who meets the further eligibility requirements set forth in Article 5.15 herein shall be compensated at the rate of fifty dollars (\$50) per biweekly pay period for each pay period actually worked.

22.8 Part-time Probation. The probation period for part-time employees will be considered complete after the employee has worked 1040 regular hours of service. Regular hours do not include paid leave or overtime hours. Part-time non-benefited employees are considered to be “at will” employees with no permanent status and do not serve a probationary period.

ARTICLE 23 AUTHORIZED REPRESENTATIVES

23.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:

23.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer or designee, except where a particular Management representative is otherwise designated.

23.1.2 The Union's principal authorized agent shall be the Business Manager, or designee.

ARTICLE 24 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulations, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 25 PROBATIONARY PERIOD EXTENSION

An employee's probationary period may be extended at the discretion of the City for up to a maximum of three months of actual and continuous service.

ARTICLE 26 RETIREMENT

26.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

26.1.1 If an employee receives a service-connected disability retirement, pursuant to an application for such retirement made on or after July 13, 1986, the retirement benefit will be offset by subsequent workers' compensation payments except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.

26.1.2 Administrative costs of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. Costs

to the fund for staff salaries and indirect labor costs shall not exceed 0.17% of assets in the fund per year.

In the event the administrative costs of the Federated Retirement System exceed the administrative cost limit as listed above, representatives from the Office of Employee Relations, OE#3, and the Office of Retirement Services will meet to discuss the increase in administrative costs.

ARTICLE 27 RETIREE HEALTHCARE FUNDING AND BENEFITS

- 27.1 Effective June 28, 2009, the City and the Union have agreed to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the “policy method”) to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan (“Plan”). The transition began on June 28, 2009. The Plan’s initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan’s actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.385 of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 27.2 The Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement.
- 27.3 The phase-in to the ARC shall be effective on the first pay period of the City’s fiscal year in each succeeding year, the first increment of which was effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of the ARC may vary upward or downward. The City and Employee Organization agree that the retiree healthcare contribution rates as of June 20, 2015, will remain in effect until December 19, 2015. The City and plan members shall be contributing the contribution rate based upon the full Annual Required Contribution, beginning on December 19, 2015. In subsequent fiscal years, the City and the plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.385 of the San Jose Municipal Code.
- 27.4 The City has established a qualified 115 trust (“Trust”). Employee contributions will begin going into the Trust in time to avoid any potential of reaching the IRS limits on the existing medical benefits account or upon receipt of a ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.
- 27.5 If employee contributions are deposited into the Trust prior to receiving a ruling from the IRS that the contributions can be treated as pre-tax and the City subsequently receives an IRS determination that the contributions should be treated as post-tax, the City agrees to indemnify any employee as to any IRS liability arising solely from the contributions that were taken as pre-tax prior to the IRS determination. The City and the

Union will immediately meet and confer over an alternative trust vehicle for the prospective contributions should the IRS determine that the contributions are post-tax.

- 27.6 It is the objective of the parties that the Trust created pursuant to the above shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.
- 27.7 Employees hired into full-time benefited positions on or after the first pay period following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. The City will pay the unfunded liability contribution that these employees and the City would have otherwise paid had they gone into the retiree healthcare defined benefit program.
- 27.8 Neither the City nor the Union waives any rights or assertions, each may have, related to the retiree healthcare benefit through any of the provisions of this Article.

ARTICLE 28 PERFORMANCE EVALUATION

- 28.1 The purpose of performance evaluation is to have formal communication between supervisor and employee regarding job performance. It is a value to both parties to have this process be meaningful and fair.
- 28.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.
- 28.3 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.
- 28.4 Key Element Review. If the employee formally receives an overall performance rating of meets standard, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director, or designee. The employee must submit a written request to the Director, or designee, specifying the reasons for such request, within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall investigate the request, arrange a meeting with the employee and provide a written response to the employee within 30 calendar days of receipt. The written response of the Director, or designee, shall be final.
- 28.5 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made in writing to the Department Director or designee within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall investigate the appeal, arrange a meeting with the employee and provide a written response to the employee within 30 calendar days of receipt.

- 28.5.1 If the employee is dissatisfied with the decision of the Department Director or designee, the employee may, within ten (10) calendar days from the Director's, or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.
- 28.5.2 The City Manager or designee shall hold a hearing within a reasonable time, and within ten (10) days of the hearing shall inform the employee of the decision. The decision of the City Manager or designee shall be final. This will be the only appeal process applicable to review the performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director or designee, or the City Manager or designee.

ARTICLE 29 DISCIPLINE

Disciplinary action is defined as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. Discipline will be initiated pursuant to the guidelines outlined in the City of San Jose Discipline Training Handbook. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense.

The City recognizes the process of timely, fair and consistent disciplinary actions is a key factor in maintaining positive employer-employee relations. It is in the interests of both parties to have allegations of misconduct investigated in a thorough and timely fashion.

The appeal process for any disciplinary action shall continue to be only those in effect at the time of the execution of this agreement.

When an employee is being interviewed and the employee reasonably believes that the investigation is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.

No provisions of this Article shall be subject to the grievance procedures of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE 30 EMPLOYEE ASSISTANCE REFERRAL

- 30.1 If deemed desirable for job-related reasons, a supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP). The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action.

Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

- 30.2 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

ARTICLE 31 SUBSTANCE ABUSE TREATMENT PROGRAM

- 31.1 Substance Abuse Program. Full-time employees, and part-time employees eligible for benefits under Section 22.1 of this agreement, shall be eligible for substance abuse treatment benefits and are subject to the terms and conditions of the City of San Jose Substance Abuse Program & Policy.

ARTICLE 32 ALTERNATE WORK SCHEDULE

- 32.1 Employees may be eligible for an Alternative Work Schedule, subject to the provisions and conditions in the City of San Jose Alternative Work Schedules Policy. Neither the failure of the Department to enter in an alternative schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12.

ARTICLE 33 LABOR MANAGEMENT COMMITTEES (LMC)

- 33.1 Purpose. To serve as an advisory committee and to facilitate employee involvement in issues which affect the immediate work environment and to facilitate positive union-management relations.
- 33.2 Structure. Departments may set up committees based upon mutual agreement. Management and labor each select three (3) representatives. There may be alternates as appropriate. All participants are encouraged to propose issues for discussion, and the committee will set priorities. Decision making within this forum will be by consensus. The LMCs will schedule quarterly meetings, and establish a method for calling additional meetings to handle issues on an ad hoc basis.
- 33.3 Authority. LMCs provide a forum for discussion of employee and management concerns and may recommend solutions. LMCs may be used for a preliminary review of department initiated changes to policies or practices. Guidelines will be issued by the Office of Employee Relations on the types of subjects that would be appropriate for discussion e.g., alternate work schedules, shift bidding, vacation bidding, internal transfer policies, clarification of rules and departmental procedures, rumor control etc.

The LMCs are not authorized to meet and confer to create contractual obligations, nor are they authorized to change the MOA to authorize any practice in conflict with existing contracts or rules.

The Office of Employee Relations and the OE#3 Business Agent will be involved in LMC meetings as necessary. The LMCs should keep both parties informed of their discussions, and provide copies of any written materials they generate. The Office of Employee Relations will provide training for the committee members and an orientation

for Department Directors. This process is not designed for individual grievances, disciplines or to replace the Steward system.

ARTICLE 34 SUPERVISION OF INMATES AND PROGRAM PARTICIPANTS

Supervision of inmates in the Work Furlough Program will be restricted to City employees in a lead or supervisory capacity only. Only employees with lead or supervisory responsibilities in their job description may be assigned to supervise a work crew.

The City and the Union agree that the use of persons, who in the course of legal proceedings, are required to perform community service, is a valuable resource, but not intended to replace full time permanent Civil Service employees.

34.1 The City shall maintain a list of the programs that provide inmates or participants currently in use by the City. Each applicable department will maintain records of the number of inmates or participants utilized, and the Office of Employee Relations will provide this information to the Union when requested, but not more than on a semi-annual basis.

34.2 The supervision of inmates or participants in the applicable programs will be restricted to City employees with lead or supervisory responsibilities in their current job classification specifications and have completed the training required by the applicable program(s) and the training required by the City.

34.2.1 Pursuant to Article 5.4, the supervision of inmates or participants in the applicable programs may also be assigned to City employees who are receiving Higher Class pay for a temporary absence or a vacant position with lead or supervisory responsibilities in that job description and who have completed the training required by the applicable program(s).

ARTICLE 35 TIME DONATION PROGRAMS

Employees may donate time to eligible employees as outlined in the Time Donation Programs Section in the City Policy Manual.

ARTICLE 36 NEW EMPLOYEE ORIENTATION

The City shall provide the OE#3 Business Agent reasonable access (up to 30 minutes) to new employees during the quarterly new employee orientations to provide information on OE#3. Attendance at any presentations by OE#3 shall be voluntary on the part of the new employee. The OE#3 Business Agent shall work out arrangements with the Human Resources Department.

ARTICLE 37 EMPLOYEE COMMUTE BENEFIT PROGRAM

The Employee Commute Benefit Program shall be as follows:

- 37.1 Full-time, and part-time employees who worked an average of twenty (20) or more hours per week within the previous calendar month, shall be eligible to participate in the Employee Commute Benefit Program. Seasonal workers and Airport employees are not eligible to participate in the Employee Commute Benefit Program; the Airport provides its own separate employee commute program.
- 37.2 Participation in an Employee Commute Benefit Program through the Santa Clara Valley Transit Authority ("VTA") will be available to eligible employees, subject to the terms of the Employee Commute Benefit Program as defined in Article 37.1.
- 37.3 Pursuant to the Employee Commute Benefit Program, eligible employees shall be allowed to use pre-tax dollars ("Pre-Tax Payroll Deduction Program") to pay for transit service beyond those provided by VTA. The administrative fees of the Pre-Tax Payroll Deduction Program will be paid for by the City. The Pre-Tax Payroll Deduction Program shall enable employees to use pre-tax dollars to pay for non-VTA transit services, which may include, but are not limited to, Caltrain, the Hwy 17 Express Bus, and BART.

ARTICLE 38 CITY-PAID PARENTAL LEAVE

Full-time employees shall be eligible for the City-Paid Parental Leave and are subject to the terms and conditions of the City of San Jose's Paid Parental Leave Policy.

Effective January 1, 2024, for eligible births, adoptions, or foster care placements, full-time employees will receive a maximum total of three hundred and twenty (320) hours of paid time off and shall be eligible to use up to a maximum total of one-hundred and twenty (120) hours of their available sick leave for City-Paid Parental Leave reasons.

- For the period of January 1, 2024, through June 23, 2024, no retroactive timecard adjustments will be allowable and any additional City-paid parental leave hours as provided for herein may only be used on a prospective basis.


City-Paid Parental Leave and the use of available sick leave balances for City-Paid Parental Leave reasons must be used and completed no later than 12 months from the birth or placement of a child.

THIS AGREEMENT executed on April 10, 2024, between the City of San Jose and the International Union of Operating Engineers, Local No. 3, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.


This Memorandum of Agreement was approved by the City Council of the City of San Jose on June 11, 2024, and ratified by the International Union of Operating Engineers, Local No. 3 on June 10, 2024.

FOR THE CITY:

FOR THE UNION:


Jennifer Maguire
City Manager

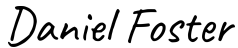
7/10/2024
Date


Jeremy Cabaccang
Business Representative
Operating Engineers, Local 3 (OE#3)

07/10/2024
Date


Jennifer Schembri
Director of Employee Relations
Director of Human Resources


7/10/2024
Date


Daniel Foster
Team Member
Operating Engineers, Local 3 (OE#3)

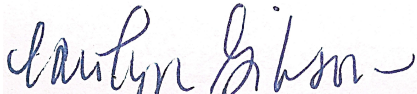
07/10/2024
Date


Elsa Cordova
Assistant to the City Manager
Office of Employee Relations


7/10/2024
Date


Rocio Munoz
Team Member
Operating Engineers, Local 3 (OE#3)

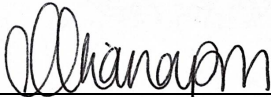
07/8/2024
Date


Carolyn Gibson
Senior Executive Analyst
Office of Employee Relations

7/10/2024
Date


John Carbaugh
Team Member
Operating Engineers, Local 3 (OE#3)

07/9/2024
Date


Iliana Plascencia
Executive Analyst
Office of Employee Relations

7/10/2024
Date