

Memorandum of Agreement

**Confidential Employees' Organization (CEO)
Local 101
AFSCME, AFL-CIO**

City of San José



July 1, 2017 – June 30, 2018

Confidential Employees' Organization

Memorandum of Agreement

July 1, 2017 – June 30, 2018

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The Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, on April 6, 2017 by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the Confidential Employees' Organization, Local No. 101, American Federation of State, County, and Municipal Employees, AFL-CIO, hereinafter referred to as the "Employee Organization" or "Organization".

For the purpose 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 or from the specific language that a different meaning is intended.

ARTICLE 1 RECOGNITION

1.1 Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Confidential Employees' Organization, Local 101, AFSCME, AFL-CIO, hereinafter referred to as the Employee Organization 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 an appropriate unit.

ARTICLE 2 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 Confidential Employees' Organization, AFSCME, Local 101, AFL-CIO.

ARTICLE 3 PERIOD OF MEMORANDUM OF AGREEMENT

3.1 This Agreement shall become effective July 1, 2017, except where otherwise provided, and shall remain in effect through June 30, 2018. 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 held no later than fifteen (15) calendar days after the City or Employee Organization receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

ARTICLE 4 FULL UNDERSTANDING, MODIFICATION AND WAIVER

4.1 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 Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

- 4.2 Existing benefits within the scope of representation provided by ordinance or resolution of the City Council or provided in the San Jose Municipal Code shall be continued without change during the term of this Agreement. Such existing benefits that are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 4.3 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.
- 4.4 Existing benefits within the scope of representation provided in the City Policy Manual and the Human Resources Benefits Handbook shall be continued without change during the term of this agreement, unless advance notice is given to the Union, pursuant to Article 38.
- 4.5 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.
- 4.6 For Fiscal Year 2017-2018, in the event that the City reaches an agreement with any other non-sworn employee unit during the term of the Memorandum of Agreement with CEO, and such agreement with any other non-sworn employee unit includes an aggregate general wage increase or lump-sum one-time payment on a bargaining unit wide basis greater than those negotiated herein, this Agreement will reopen on the subject of wages only, and the parties will meet and confer over wages. This provision will not apply to any changes made to any classification(s) due to a market survey or classification study, any leave payout or any settlement of a grievance or other administrative proceeding.
- 4.7 On or after January 1, 2018, the parties agree that this agreement may reopen on the subject of the Period of the Memorandum of Agreement, or term, by mutual agreement to extend the term of the agreement beyond June 30, 2018. The parties agree to meet and confer over the subject of the Period of the Memorandum of Agreement, or term, within thirty (30) days of a request by either party.

ARTICLE 5 AUTHORIZED REPRESENTATIVES

- 5.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:
 - 5.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative except where a particular Management representative is otherwise designated.
- 5.2 The Employee Organization's principal authorized agent shall be the President, or his/her duly authorized representative.

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 work day, 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 forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period of at least thirty (30) minutes, Monday through Friday, except for those employees electing and approved for an alternate work schedule as defined in Article 33. The length of any lunch period is subject to supervisory approval.
- 6.3.1 Employees required to perform duties as support personnel of uniformed classifications assigned a schedule of four (4) ten (10) hour shifts per work week may also be assigned a schedule of four (4) ten (10) hours shifts per workweek.
- 6.4 The work period for purposes of the Fair Labor Standards Act may be designated for each employee as appropriate so that there is no overtime built into the regularly scheduled workweek.
- 6.5 The City may establish a work schedule other than Monday through Friday where the interests of, or service to, the public requires. Employees assigned to a five (5) day eight (8) hour schedule or to a schedule including nine (9) hour days shall be given two (2) consecutive days off, and employees assigned to a four (4) day ten (10) hour shift shall be given three (3) consecutive days off, even though such 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) or three (3) consecutive days off, whichever is applicable. As an alternate to consecutive days off, an employee may work a schedule without consecutive days off when the schedule is mutually agreed upon between the Department and the employee. Such an agreement may be rescinded by the employee or the Department with reasonable notice, but not less than fourteen (14) calendar days, absent emergency, to the employee or Department.
- 6.6 The Department Director, subject to regulation and control by the City Manager, shall determine the number of hours of work per work day and work week for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.6.1 To the extent possible and with the exception of any shift changes, when a non-benefited part-time employee has worked six (6) consecutive days, the employee, in so much as possible, shall be provided with one (1) scheduled day off. Nothing herein contained, however, 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.
- 6.7 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. With the exception of Holiday Leave, paid time off shall not be considered time worked for the purpose of calculating eligibility for overtime.
- 6.7.1 Part-time employees are only eligible for overtime pay if the employee works over forty (40) hours in one (1) week.

- 6.8 An employee who is assigned or elects and is approved for an Alternative Work Schedule as defined by Article 33 and is authorized or required to work overtime in excess of forty (40) hours per the employee's designated work week, shall be compensated at the rate of time and one-half (1-¹/₂) the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement.
- 6.9 Overtime worked shall be compensated at the time and one-half (1-¹/₂) rate. An employee assigned to work overtime may elect to either be paid for such overtime or be credited with compensatory time off, except under the following circumstances:
- The employee's choice of compensatory time would interfere with a department's ability to recover the cost of overtime;
 - The employee's choice of compensatory time would interfere with the department's ability to have sufficient staffing or coverage;
 - The employee's choice of pay cannot be accommodated within the department's overtime budget;
 - 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
 - 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 to 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.
- 6.9.1 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.
- 6.9.2 Part-time employees who are assigned and work in excess of forty (40) hours per week shall be compensated at the time and one-half (1-¹/₂) rate. A part-time employee who is assigned and works in excess of forty (40) hours per week may elect to either be paid for such overtime or credited with compensatory time off, except under the above listed circumstances.
- However, at no time shall a part-time employee's compensatory time balance exceed forty (40) hours. Once an employee's compensatory time balance reaches forty (40) hours, employees shall be paid for all time assigned and worked in excess of forty (40) hours per week.
- 6.9.3 Notwithstanding any other provision of Section 6.9 to the contrary, the Director of a Department 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, with reasonable notice of no less than thirty (30) days provided to affected employees. This announced intent may apply to an entire department or to a specified section(s) of a department. An employee who is scheduled and approved to take compensatory time off may request an exemption to the payout. The request shall be made to the Department Director, or his/her designee, and his/her decision shall be final.

- 6.9.4 In the event the outstanding amount of accrued compensatory time owed to an employee exceeds 240 hours, the employee will automatically receive payment for any hours in excess of 240 hours.
- 6.10 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 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.
- 6.11 A fifteen (15) minute 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.
 - 6.11.1 Part-time employees will be provided a fifteen (15) minute rest period during each uninterrupted work period of at least four (4) hours.
- 6.12 Canceled Work

If an employee is scheduled to work overtime on his/her day off and the work is canceled within twenty-four (24) hours of the scheduled overtime, the employee is entitled to two (2) hours compensation at the appropriate rate.
- 6.13 Telecommuting

An employee authorized or required to telecommute, which requires at least fifteen minutes shall be compensated for the time worked to the nearest fifteen minutes at the appropriate rate.

An employee must receive approval from his/her supervisor in order to telecommute and be compensated as stated above.

ARTICLE 7 WAGES AND SPECIAL PAY

- 7.1 Wages
 - 7.1.1 Effective June 18, 2017, all salary ranges for employees holding positions in classifications assigned to CEO (Union Code 100/101) shall be increased by approximately 3%. This will result in the top and bottom of the range of all classifications represented by CEO being approximately 3% higher. All employees will receive an approximate 3% base pay increase.
 - 7.1.2 Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classification.

- 7.1.3 The salary steps for all classifications represented by CEO shall be approximately 2.5%.
- 7.2 Shift Differential
- 7.2.1 A swing shift differential of one dollar and fifty cents (\$1.50) an hour shall be paid to employees for each regularly scheduled hour worked after 2:00 p.m. if at least four (4) hours of a regularly assigned scheduled of continuous work hours are worked after 5:00 p.m.
- 7.2.2 A night (graveyard) shift differential of one dollar and seventy-five cents (\$1.75) per hour shall be paid to employees for each regularly scheduled hour worked after 11:00 p.m. and prior to 8:00 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 11:00 p.m. and before 8:00 a.m.
- 7.2.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.
- 7.2.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during the period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.
- 7.2.5 Except as otherwise required by State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.
- 7.3 Working in a Higher Classification
- 7.3.1 Upon specific assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. 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 be eligible to serve in the same higher class assignment for at least six (6) months and shall return to his/her regular assignment.
- 7.3.1.1 By mutual written agreement between the City and the Union, an employee assigned to work in a higher classification may be extended in his/her specific assignment past the aforementioned six (6) month limitation.
- 7.3.2 Employees specifically assigned to duties of a higher classification 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. 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. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all the eligible hours worked in the higher class within the pay period.

7.3.3 Employees assigned to the duties of a higher classification due to a vacancy, and not due to the temporary absence of an employee, shall be compensated at the rate in the salary range of the higher class, pursuant to section 7.3.2 above, for City observed holidays.

7.3.4 Upon request by the Union, the City will provide a report, no more than quarterly, of the employees working in a higher class pay assignment.

7.4 Legal Service

7.4.1 The City agrees to pay to the Confidential Employees' Organization, Local No. 101, AFSCME, AFL-CIO Legal Trust Fund the sum of four dollars and twenty-five cents (\$4.25) per month for each full-time employee on the payroll for the last pay period ending prior to the first of each month for private legal service benefits for such employees and their dependents subject to the following:

7.4.1.1 No portion of the sums heretofore paid or subsequently paid shall be used to provide legal services for any employee or dependents in any action or proceeding in which the Employee Organization is a party or in which the City is a party, and

7.4.1.2 No portion of the sums heretofore paid or subsequently paid shall be used in connection with any matter, action or proceeding involving employer-employee relations involving the City, its commissions, officers, or employees; except

7.4.1.3 The provisions of 7.4.1.1 and 7.4.1.2 notwithstanding, a portion of the sum so paid may be used to pay the Employee Organization's portion of the cost of the arbitrator, including the arbitrator's legitimate expenses, and the Employee Organization's share of the transcript(s) of the arbitration proceeding. Further, a portion of the sum so paid may be used to reimburse City employees for time spent as witnesses in arbitration proceedings involving the Employee Organization and the City provided such time is spent during regularly scheduled working hours. The compensation, however, shall not include any payment for any such time spent in arbitration proceedings involving the Employee Organization and the City which falls outside the employee's regularly scheduled working hours.

- 7.4.1.4 The City shall have the right, through independent auditors selected by the City, upon written request to periodically review and audit the books and records of the fund in San Jose at reasonable times, to determine whether the Employee Organization has complied with the conditions contained herein. The Employee Organization shall, upon completion of any such reviews and audits, reimburse the City for half of the costs thereof within ten (10) days after receipt of a statement of such costs from the City.
- 7.4.1.5 Failure of the Employee Organization to maintain such books and records or to make such books and records available in San Jose or to permit such inspection, or to pay half of the costs of such review and audit shall constitute grounds for the City to terminate or suspend, in its discretion, the payment of further payments; and
- 7.4.1.6 If upon inspection of the books and records the City determines that any portion of the sum contributed has been diverted to purposes not permitted by the provisions of this Article, the City may, in addition to any other remedies available to it under law, suspend or terminate further payments.
- 7.4.1.7 As used herein, action or proceedings shall include, but not be limited to, court proceedings, proceedings or hearings or appearances before legislative, administrative, or quasi-judicial agencies or bodies and arbitration, except to the extent provided in paragraph 7.4.1.2 herein above, fact-finding, mediation, or other similar dispute resolving procedures.

7.5 Benefits Review

The Benefits Review Forum (BRF) may evaluate and recommend changes in Health, Dental and other employee Insurance plans. Any recommendations of the BRF shall be determined by a consensus of the non-sworn, officially recognized bargaining unit members of the Forum, subject to the ratification of the CEO Union membership. The City shall consider the recommendations made by the BRF.

7.6 Health Insurance

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

- 7.6.1 The City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible 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 plan.

- 7.6.2 The Kaiser Permanente 1500 Deductible HMO Benefit Plan will be available to employees represented by CEO in addition to the existing plan options.
- 7.6.3 Co-pays for Non-Deductible HMO plans shall include the following:
- a. Office visit Co-pay shall be \$25
 - b. Prescription Co-pay shall be \$10 for generic and \$25 for brand name.
 - c. Emergency Room Co-pay shall be \$100
 - d. Inpatient/Outpatient procedure Co-pay shall be \$100
- 7.7 Dental Insurance
- 7.7.1 The City will provide dental coverage for eligible full-time employees and their dependents in accordance with one of the two available plans. The plans are described in the City of San Jose Employee Benefits Handbook. All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).
- 7.7.2 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 ninety-five percent (95%) of the full premium cost for the selected dental coverage for eligible full-time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost of the selected plan.
- 7.7.3 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending Sections 3.24, Part 24, and 3.28, Part 17, Title 3 of the San Jose Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.
- 7.7.4 If a retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by other available option(s).
- 7.8 Vision Care
- The City will contribute towards vision care for eligible full-time employees up to sixteen dollars (\$16.00) per month (\$8.00 for 24 biweekly pay periods) or the cost of the premium, whichever is less, for coverage under a vision plan sponsored by the City. The employee shall pay the difference between the City contribution and the total premium of the vision care plan selected by the employee.
- 7.8.1 Effective January 1, 2016, all available plans will have a 4-tier structure (Employee, Employee plus Spouse/Domestic Partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first pay period in payroll calendar year 2016, which starts December 20, 2015.
- 7.9 Payment-In-Lieu of Health and/or Dental Insurance Program
- 7.9.1 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 January 1, 2016, payment-in-lieu of health and/or dental insurance will have a 4-tier structure (Employee, Employee plus Spouse/Domestic Partner, Employee plus Child(ren) and Family). The payment-in-lieu amounts will be adjusted effective the first pay period in payroll calendar year 2016, which starts December 20, 2015.

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

| <u>Health Insurance Tier</u> | <u>Health-in-Lieu</u> | <u>Dental-in-Lieu</u> |
|---------------------------------------|-----------------------|-----------------------|
| Employee | \$89.09 | \$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.

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.

- 7.9.3 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, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.
- 7.9.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period, or within thirty (30) days of a qualifying event as defined in the Human Resources Benefits Handbook, occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event must wait until the next open enrollment period to enroll in payment-in-lieu of insurance programs. 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.
- 7.9.5 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 work week 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.
- 7.9.6 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.

7.9.6.1 **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. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

7.9.6.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

7.10 Standby Pay

Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate (1.5) for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 7.11, in lieu of the one hour of standby compensation for that eight (8) hour shift.

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

7.11 Call Back

An employee who is called back and reports to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate (1.5). This section shall apply on either a work day after the employee has left work 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.

7.11.1 To the extent possible, when an employee has worked in excess of sixteen (16) hours, upon request by the employee, the Department Director or designee may approve time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

7.12 Jury Duty

7.12.1 Each full-time employee, or each part-time employee who is eligible for benefits under Article 24 of this Agreement, 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:

- 7.12.1.1 Employees assigned to a day shift, including employees regularly assigned to a shift beginning between 12:00 Noon and 1:59 p.m.
 - 7.12.1.1.1 In the 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 his/her shift. For this he/she receives the full day's pay, and shall pay to the City the amount he/she receives from the court for the jury duty, excluding mileage.
 - 7.12.1.1.2 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, he/she will receive no pay from the City for that day, but will be entitled to keep the jury fee.
 - 7.12.1.1.3 In the case in which the employee is not released by the Court until after 1:00 p.m., he/she need not return to work. He/she receives the full day's pay, and shall pay to the City the jury fee, excluding mileage.
 - 7.12.1.1.4 Employees regularly assigned to a shift beginning between 12:00 Noon and 1:59 p.m., shall be considered day shift employees for purposes of this section.
- 7.12.2 Employees assigned to a swing or graveyard shift:
 - 7.12.2.1 Employees assigned to a swing or graveyard shift, as defined in Section 7.2, 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.
 - 7.12.2.2 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.
 - 7.12.2.3 Employees assigned to a swing or graveyard shift who are not released by the court at 1:00 p.m. or earlier, he/she 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.
 - 7.12.2.4 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 by 7.12.2.1 above, such employee shall not receive any compensation from the City for that shift but may keep the jury fee.

7.13 Witness Leave

- 7.13.1 Each full-time 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 his/her employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive his/her regular salary during the term of his/her service as a witness under subpoena, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action.
- 7.13.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with his/her employment, shall be credited with overtime for the time spent in court, or shall be entitled to the compensation provided in Section 7.11, whichever is greater, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action.
- 7.13.3 Upon service of subpoena, an employee shall immediately advise his/her Department Director or supervisor thereof, and of the time when he/she is required to appear in Court.
- 7.13.4 Employees who are required to perform standby duty for Witness Leave shall be entitled to the compensation provided by Section 7.10. In the event the employee is called from off-duty to testify in any court, under subpoena, on any subject connected with his/her employment, the employee shall be entitled to the compensation provided by Section 7.13.2 above, in lieu of the compensation provided by Section 7.10.

7.14 Educational and Professional Incentives

- 7.14.1 The City will reimburse each employee 100% of expenses incurred, up to \$1,000 per fiscal year, for registration, tuition, fees, 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. Of the \$1,000 amount, up to \$600.00 may be used for non-college accredited courses, online courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates 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. City Policy Manual Section - Education Reimbursement outlines additional details of the program.
- 7.14.2 The City supports special training and professional development opportunities for the whole bargaining unit or major subgroups of the bargaining unit, e.g., Analysts or Administrative Staff. Ideas for training and professional development may be proposed by bargaining unit groups to be developed in conjunction with a liaison appointed by the City Manager.
- 7.14.3 Each employee will be allowed a minimum of eight (8) hours paid release time per year to attend training and/or professional development classes developed under section 7.14.2. Additional subjects proposed by bargaining unit groups not covered under the eight (8) hour allotment may be incorporated into regular training programs provided by the City.

7.14.4 If an employee is denied educational and professional incentives under the requirements set forth above, 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, or designee. The written decision of the Director of Human Resources, or designee shall be final, with no process for further appeal.

7.15 Mileage Reimbursement

Each employee of the City who is authorized or required by the City Manager or designee to use the employee's private automobile in the performance of the duties of the employee's position, shall be entitled to receive and shall be paid as a travel allowance for such use of his/her private automobile a "mileage reimbursement rate" consistent with the City's rate.

7.16 Bilingual Pay (Full-Time and Part-Time Benefited Employees)

7.16.1 An employee must meet at least one of the following eligibility requirements and must be certified as bilingual for oral communication, written translation or sign language duties according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the Union.

1. The employee is currently assigned to a position selectively certified based on bilingual ability by the Director of Human Resources or designee

or

2. The duties currently assigned and currently being performed by an employee have been designated by the Department Director or designee as requiring utilization of a non-English language on a regular basis.

7.16.2 Each full-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of twenty-nine dollars (\$29) per biweekly pay period and for performing written translation duties at the rate of forty dollars (\$40) per biweekly pay period for each pay period actually worked.

7.16.3 Each part-time benefited employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of nineteen dollars (\$19) per biweekly pay period and for performing written translation duties at the rate of thirty dollars (\$30) per biweekly pay period for each pay period actually worked.

7.16.4 If an eligible employee is on paid leave for a period of one (1) full pay period or more, the employee will not receive bilingual pay for that period.

7.16.5 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.

7.17 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. For employees on reduced schedules, the City's contribution for premiums will be provided in accordance with City Policy Manual - Reduced Workweek Schedules.

7.18 Auto Liability Insurance

No employee shall be required, as a condition of employment, or continued employment, to maintain automobile liability insurance in excess of the minimum required by the State of California.

7.19 Notary Services

Employees commissioned by the Secretary of State for the State of California to perform notary services and who are directed to perform notary services on behalf of the City of San Jose, shall be compensated at the rate of twenty-five dollars (\$25) for each bi-weekly pay period in which the employee performs notary services. Effective the first pay period of payroll calendar year 2008, employees commissioned by the Secretary of State for the State of California to perform notary services and who are directed to perform notary services on behalf of the City of San Jose, shall be compensated at the rate of twenty-five dollars (\$25) for each bi-weekly pay period, subject to Departmental approval.

7.20 Employee Assistance Program (EAP)

7.20.1 During the term of this agreement, the City will continue to provide an Employee Assistance Program at the level of benefit provided on the effective date of this agreement.

7.20.2 Mandatory Referrals to EAP. 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. Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

7.21 Substance Abuse Treatment Program

Full-time employees are eligible for substance abuse treatment benefits and are subject to the terms and conditions of the City of San Jose Substance Abuse Program and Policy.

7.22 Dependent Care Assistance Program

During the term of this Agreement, the City will continue to provide a Dependent Care Assistance Program at the level of benefit provided on the effective date of this Agreement.

7.23 Definition of the Market

7.23.1 Comparable classification in cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco and Alameda Counties serving populations of 100,000 or more will be used to compare classifications. Population figures will be used from the U.S. Census Bureau.

7.23.2 Compensation information from the private sector will be gathered from existing published sources, and used to supplement public sector data as deemed appropriate.

7.23.3 Based on the April 1, 2000, US Census Bureau, 2000 Census of Population, the following agencies currently meet the definition of the market.

| | |
|---------------------------|---------------------|
| Alameda County | Berkeley |
| Concord | Contra Costa County |
| Daly City | Fremont |
| Hayward | Oakland |
| San Francisco City/County | San Mateo County |
| Santa Clara | Santa Clara County |
| Sunnyvale | |

7.24 Protective Footwear

7.24.1 The City agrees to provide a voucher for the purchase of protective footwear for up to \$200 for employees when it is determined by the Director of Human Resources or designee that protective footwear is required for the employee. 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 calendar year. The City will replace the employee's safety shoes if they are damaged beyond use due to a workplace incident. An individual may select an approved style that is more expensive than the City maximum by paying the difference.

ARTICLE 8 DUES AND AGENCY FEE DEDUCTIONS

8.1 The City will deduct from the pay of each employee covered by this Agreement, while such employee is assigned to a classification included in a representation unit represented by the Employee Organization, dues uniformly required as a condition of membership, pursuant to the Employee Organization'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.

8.1.1 The City agrees to deduct from the pay of each employee covered by this Agreement, which such employee is assigned to a classification included in a representation unit represented by the Union, voluntary deductions in addition to those described in Section 8.1, provided that the employee has submitted written authorization for such additional voluntary deductions on an appropriate Authorized Dues Deduction card to the Municipal Employee Relations Officer or designee. Such additional voluntary deductions shall continue unless the employee provides written notice to the Municipal Employee Relations Officer or designee to cease the additional voluntary deductions.

- 8.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer from time to time by the designated Officer of the Employee Organization as regular monthly dues.
- 8.3 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 Employee Organization 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 Employee Organization not later than twenty-one (21) days following the pay period in which the deductions were made.
- 8.4 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 on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 8.5 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.
- 8.6 It is expressly understood and agreed that the Employee Organization will refund to the employee any Employee Organization dues erroneously withheld from an employee's wages by the City and paid to the Employee Organization. In the event the Employee Organization 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 Employee Organization.
- 8.7 The Employee Organization 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.
- 8.8 Agency Fee
- The City and the Union 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.
- 8.8.1 Accordingly, membership in the Union shall not be compulsory. An employee has the right to choose either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 8.8.6 below.
- 8.8.2 Employee's Obligation to Exclusive Representation. An employee who is a member of the Union on July 1, 2017 and any employee who becomes a member after July 1, 2017 shall maintain such membership, except as provided during the change of status period set forth in Section 8.8.3.2 below.
- 8.8.3 Any person in a classification represented by the Union must, within thirty (30) days after their employment, submit to the City either:

1. A signed authorization to deduct dues as a member of the Union; or
 2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 8.8.6 below. In this case, the employee must designate a charity from Section 8.8.6.1 to which the appropriate amount will be paid through payroll deduction.
- 8.8.3.1 If a person fails to make any of the designations set forth above within the thirty (30)- day period, the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the Union agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Union in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Union.
- 8.8.3.2 During the period June 1, 2018, through and including June 30, 2018, any employee who is a member of the Union may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Article.
- 8.8.3.3 The Union specifically agrees that the provisions of Section 8.8.7 of this Article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of an Agency Fee.
- 8.8.4 Definition of Agency Fee. The Agency Fee collected from non-member bargaining unit employees pursuant to Section 8.8.2 of this Agreement shall be limited to the Union (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Union as the Agency Fee.
- 8.8.4.1 The Union certifies that this "representation fee" includes only those costs actually incurred by the Union in representing employees, who are not also members of the Union, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Union fines, back dues, initiation fees, or any other charge required as a condition of Union membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Union in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union specifically agrees that the provisions of Section 8.8.7 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.

- 8.8.5 Annual Verification of Agency Fee by Union. The Union shall submit to the City a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, certified as to accuracy by the Union's Treasurer. Each year such reports shall be verified and submitted in writing to the City by the Union within sixty (60) days of July 1.
- 8.8.6 Employees Exempted From Obligation to Pay Union. Any employee shall be exempted from the requirements of Section 8.8.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.
- 8.8.6.1 Such exempt employee shall, as an alternative to payment of an Agency Fee to the Union, pay an amount equivalent to such Agency Fee to either:
- a. The United Way; or,
 - b. Combined Health Appeal (C.H.A.); or,
 - c. Any charity jointly agreed upon by the City and the Union. Such charities cannot be affiliated in any manner with the Union, nor can such charity be related to an established religious organization.
- 8.8.7 Hold Harmless. The Union 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 Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.
- 8.8.8 Rescission of Agency Fee Provisions. Pursuant to Government Code Section 3502.5, this Article 8, section 8 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least 30% of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.
- 8.9 Union dues payable to AFSCME shall be maintained if a dues paying member transfers from a MEF-represented position to a CEO-represented position, or vice-versa.
- 8.9.1 Should a dues paying member transfer from a MEF-represented position to a CEO-represented position, or vice-versa, a thirty (30) calendar day window will open in which the member may opt to resign their membership and become an agency fee payer. Resignation shall be in writing addressed to the City's Municipal Employee Relations Officer, or designee, with a copy to the Union.

ARTICLE 9 MANAGEMENT RIGHTS

- 9.1 Except to the extent that the rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers, and authority granted to it or which it has pursuant to any law or the City Charter, including, but not limited to: The right to direct the work force; increase, decrease or re-assign 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.
- 9.2 The City has the sole and absolute right to determine the nature and type of, assign, re-assign, 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 employees affected or the Confidential Employees' Organization AFSCME, Local 101, AFL-CIO, representing such employee.

ARTICLE 10 CONCERTED ACTIVITY

- 10.1 It is understood and agreed that:
- 10.1.1 Participation by any employee represented by the Employee Organization 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 employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this 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 Employee Organization, its officers or its authorized representatives violates 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 Employee Organization, 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 Employee Organization shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Employee Organization and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Employee Organization, and prohibit or restrict the use of any City facility of any nature whatsoever 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 shall not be subject to review under the provisions of Article 12, 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 Employee Organization agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.

- 11.2 An employee who believes his/her 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 and resolve it at that level. The employee may at any time request that a union representative 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 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 may 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.
- 11.4 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 Disputes. 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 may file a grievance on behalf of such employee(s).
- 12.2 Grievances. Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with the applicable provisions of the resolution.
- 12.3 STEP I
- 12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. 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 is necessary to obtain the facts pertaining to the grievance. Within twenty one (21) calendar days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.
- 12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

12.4 STEP II

12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

12.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

12.4.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Employee Organization representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

12.4.4 If the employee is not satisfied with the decision he/she may appeal the grievance to Step III.

12.5 STEP III

12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer within five (5) working days following receipt of the written decision at Step II.

12.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Employee Organization representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within five (5) working days following the meeting.

12.5.3 If the decision of the Municipal Employee Relations Officer is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV – Arbitration.

12.6 STEP IV – ARBITRATION

12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Employee Organization representative may appeal the grievance to Arbitration. The appropriate Employee Organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) working days following receipt by the employee of the written answer at Step III.

- 12.6.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Employee Organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly 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.
- 12.6.3 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.
- 12.6.4 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing
- 12.6.5 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.
- 12.6.6 The decision shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Employee Organization.
- 12.6.7 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.
- 12.6.8 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, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.
- 12.6.9 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.

12.7 Release Time

- 12.7.1 The Employee Organization President and/or a designated representative shall be authorized release time to appear at Civil Service Commission or City Council meetings when such bodies are considering matters affecting the Employee Organization, to attend Federated Retirement Board meetings, and to attend meetings to which he/she is called by the City Administration regarding matters affecting the Employee Organization, so long as this participation does not result in overtime to perform their usual and customary duties. Participation at such meetings should be in lieu of usual and customary duties and will not result in overtime compensation.
- 12.7.2 Employees will be granted release time in order to donate blood at City sponsored blood drives. Employees will be granted two (2) hours of release time per calendar quarter to donate platelets.

12.8 Stewards

- 12.8.1 Stewards shall be designated in the ratio of approximately one (1) steward for every fifty (50) employees in the representation unit. It is recognized that shift and geographical locations may require an adjustment to the above ratio.
- 12.8.2 The Employee Organization agrees that it shall certify as Stewards only full-time employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.
 - 12.8.2.1 A Steward shall function under the terms of the grievance procedure and only on the shift and in the department(s) or sections of a department(s) for which he/she has been certified. Exceptions to this paragraph may be made by mutual agreement of the parties. Should a Steward be required to leave his/her assigned duties to investigate and/or process a grievance, he/she shall secure the permission of his/her immediate supervisor and inform the supervisor of the general nature of the grievance, and report back to the supervisor upon returning to his/her assigned duties. Permission for a Steward to leave his/her assigned duties shall not be unreasonably withheld. In the event it is necessary for a Steward to handle a grievance in a department other than the department to which he/she is regularly assigned, the Steward shall report to the immediate supervisor of the aggrieved employee, the employee involved in the grievance, or the function being investigated.
 - 12.8.2.2 In the event the parties agree that a Steward or other representative of the Employee Organization is permitted to investigate and/or process a grievance other than as provided in 12.8.2.1 above, such representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.
- 12.8.3 Although the grievances may be investigated and/or processed during normally scheduled working hours, the Employee Organization agrees that the time spent by its designated representatives shall be kept to a minimum

and that no Employee Organization 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 Employee Organization also agrees it will not process grievances during periods of overtime.

12.8.4 The Employee Organization agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as Stewards.

12.8.5 The parties agree that they have a mutual interest in well-trained Stewards. Toward this end, certified Stewards shall be granted a maximum of eight (8) hours paid release time during each year of this agreement to participate in training sessions related to the provisions of this agreement, jointly conducted by Employee Organization and City representatives, according to an outline of such training activities to be submitted by the Employee Organization and approved by the City prior to the conduct of any such training sessions.

12.9 General Provisions

12.9.1 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, except for appeals to Step IV, or the appropriate Employee Organization representative may appeal the grievance to the next higher step within the time limits provided.

12.9.2 The Employee Organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

12.9.3 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Employee Organization 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.

12.9.4 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 Step II within ten (10) calendar days following the date of separation.

12.9.5 Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.

12.10 Department Labor Management Committees

12.10.1 Purpose:

To serve as an advisory committee to Management and to facilitate positive union-management relations. These collaborative efforts between labor and management have proven successful in the past and are encouraged when appropriate.

12.10.2 Structure:

A Labor Management Committee may be established in a department by mutual agreement. Management and labor each selects an equal number of committee representatives. By mutual consent of the parties the number of committee members may be modified. This forum will be conducted on a consensus basis. The Labor Management Committee will set up meetings on an ad hoc basis as determined by the parties. If all parties are in agreement, a joint department labor management committee may be established to include, or join with, other bargaining units.

12.10.3 Authority:

Training and guidelines will be provided by the Office of Employee Relations. The Labor Management Committee is not authorized to meet and confer to create contractual obligations nor to change the MOA to authorize any practice in conflict with existing contracts or rules. The Office of Employee Relations and CEO President or Business Agent will be involved in a Labor Management Committee meeting upon request. As appropriate the Labor Management Committee shall keep both parties informed of their discussions and any written material they generate. This process is not designed for individual grievances, disciplines, or to replace the Steward system.

12.10.4 The City will provide up to one (1) hour of paid release time for up to five (5) Union representatives for the purpose of preparing for Department Labor Management Committee meetings and time for attending Department Labor Management Committee meetings when such meetings are scheduled, for any portion of the employee's assigned workday that coincides with this time, except during a normally assigned lunch period. To the extent possible, Union Representatives will schedule preparatory meetings during their normally assigned lunch period. Employees are not eligible to receive overtime compensation for any portions of the meetings that fall either before or after the employee's regularly assigned workday.

12.11 City-Wide Labor Management Committee

12.11.1 Purpose. To provide regular communication between the Union and the City, to solve workplace issues, to provide training for and support to the departmental labor management committees, and to facilitate positive Union-management relations.

12.11.2 Structure. Management shall include up to two representatives from Employee Relations and one representative from Human Resources. Labor shall include two Officers and one Business Agent. Additional representatives may be requested to participate on specific issues. Issues for discussion and the meeting schedule will be mutually agreed upon. Decision-making will be by consensus.

12.11.3 Authority. The City-Wide Committee will coordinate and provide training and support to department labor management committees as requested, and shall address city-wide issues. The City-Wide Labor Management Committee is authorized to enter into tentative agreements pending usual authority and/or ratification processes. This process is not designed or

intended to address individual grievances, review personnel issues, appeal disciplines, replace the steward system, or appeal decisions of department Labor Management Committees.

- 12.11.4 Release Time. The City will provide up to one (1) hour of paid release time for up to two (2) Union representatives for the purpose of preparing for and attending the City-Wide Labor Management Committee meeting, and time for attending the City-Wide Labor Management Committee meeting when such meetings are scheduled, for any portion of the employee's assigned workday that coincides with this time, except during a normally assigned lunch period. To the extent possible, Union Representatives will schedule preparatory meetings during their normally assigned lunch period. Employees are not eligible to receive overtime compensation for any portions of the meetings that fall either before or after the employee's regularly assigned workday.

ARTICLE 13 LEAVES OF ABSENCE

- 13.1 All requests for leaves of absence without pay shall be made in writing. The appointing authority, or his/her designated representative, 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 his/her designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.1.1 Appointing authority may grant leaves of absence without pay for an employee to work on union business. Such leaves are subject to all of the provisions in the article.
- 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 registered mail, return receipt requested and shall be mailed not later than thirty (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 work day after the effective date of the cancellation, or on the first scheduled work day 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. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to a position in the department within the classification held by the employee at the time the leave commenced.
- 13.3 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.
- 13.4 The employee is responsible for coordinating the 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 taken.

- 13.5 For purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14, entitled Layoff.
- 13.6 Any employee who is absent without notification to his/her Department Director, or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary resignation, unless the failure to report 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 by the beginning of the commencement of the second consecutive shift.
- 13.7 Employees who have been separated from City service for failure to return from leave, or failure to report, and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 14 LAYOFF

14.1 Order of Layoff

When one (1) or more employees in the same class 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 appointing authority.
- 14.1.2 Probationary employees in the order to be determined by the appointing authority.
- 14.1.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.
- 14.1.3.1 The City will notify the Union within three (3) working days when a new or updated seniority list for each and every classification pertaining to any employee(s) represented by the Union has been posted or updated. The determination of seniority based on Sections 14.1.3.2 and 14.1.3.3, if applicable, shall be made prior to the publication of a seniority list.
- 14.1.3.2 If two or more permanent employees have the same class seniority, then ranking is based on Citywide seniority.
- 14.1.3.3 If two (2) or more permanent employees have the same class and the same Citywide seniority, then ranking is based on the scores on the eligible list that was used for the original hiring in the classification or the quantitative examination scores used for the original hiring in the classification. In the absence of eligible list scores or quantitative examination scores used in the original hiring, ranking on the seniority list shall be determined as follows:
- (a) The sum total of the last four (4) digits of the employee's social security number will determine seniority, with the lowest sum total being the least senior and the highest sum total being the most senior on the established list.

- (b) In the event that the sum total of the last four (4) digits of the employee's social security number should result in a tie, a random draw shall be conducted consisting only of the employees with the sum total tie. The first drawn name will be the least senior and the last name drawn will be the most senior on the established list.

14.1.4 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 thirty (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 he/she 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 he/she 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 he/she has the necessary education, experience, and training as determined by the Director of Human Resources. An employee may also accept a vacant position in a higher class, provided he/she 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 his/her most recent period of employment. Adverse decisions of the Director 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 who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 14.3 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. 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.
 - 14.6.2 In the event an employee accepts reinstatement to a lower class to which he/she 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.
 - 14.6.3 Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff shall have his/her name removed from the Reinstatement Eligible List.
 - 14.6.4 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 (3) year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director, be returned to the Reinstatement Eligible List.
 - 14.6.5 In no event shall the names 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 his/her 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 Recognized employee organizations may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Employee Organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Employee Organization 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 Employee Organization and the Municipal Employee Relations Officer.
- 15.3 All material shall identify the Employee Organization responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the sole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer shall notify the Employee Organization of any material ordered removed. The Employee Organization 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 Employee Organization to abide by the provisions of this Article shall result in the forfeiture of the Employee Organization'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.
- 15.7 The City agrees to send e-mail communications to employees represented by the Union to announce membership meetings and ratification votes upon request by the Union.

ARTICLE 16 HOLIDAYS

- 16.1 Except as hereinafter 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 holidays as observed, and on no other day, during the term of this Agreement:
- | | | |
|--------|------------------------|------------------------|
| 16.1.1 | New Years Day | Columbus Day |
| | Martin Luther King Day | Veterans Day |
| | President's Day | Thanksgiving Day |
| | Cesar Chavez Day | Day after Thanksgiving |
| | Memorial Day | Christmas Eve |
| | Independence Day | Christmas Day |
| | Labor Day | New Year's Eve Day |
- 16.1.2 When one of the above holidays falls on a Sunday, the following day shall be designated as the holiday; and when one of the above holidays falls on a Saturday, the preceding day shall be designated as the holiday.
- 16.1.3 Any other day proclaimed or designated by the Council of the City of San Jose as a holiday for which full-time employees will be entitled to holiday

leave. Should additional holidays be provided, or should an existing holiday be traded for a different holiday observance for other represented employees on a Citywide basis, such holidays shall apply to employees in this unit.

- 16.2 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 head of any department of the City government may specify the days of the week and the hours of such days when any such employee in his/her department or under his/her 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 of said holidays shall receive the salary that he/she would be entitled to for that day at his/her regular rate of pay, and in addition thereto, he shall receive compensatory time off duty equal to one and one-half (1-1/2) times the number of hours which he/she works on said holiday.
- 16.3 Said compensatory time off duty shall be credited to such employee in accordance with Article 6 of this Agreement; provided, however, that upon written request by the employee to the Department Director, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to his/her regular pay for such holiday and in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him/her multiplied by the employee's equivalent hourly rate.
- 16.4 If any of said holidays falls on a full-time employee's regular day off, during which he/she 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 employee in accordance with Article 6 provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (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/her multiplied by the employee's equivalent hourly rate.
- 16.5 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 thereto.
- 16.6 Holiday Closure. The City Manager 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 unpaid leave during the closure period. Employees who take unpaid leave during the closure shall continue to receive the following accruals: vacation, sick leave, city-wide and department seniority.

ARTICLE 17 VACATION 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 An employee shall accrue vacation leave at a rate specified below for each hour worked, in each year of employment as specified:

| <u>Years of Service</u> | <u>Hours of Vacation per 26 Pay Period Cycle</u> |
|---|--|
| First 5 years | 80 hours |
| 6 th year – 10 th year | 120 hours |
| 11 th year – 12 th year | 136 hours |
| 13 th year – 14 th year | 152 hours |
| 15 th year – 20 th year | 168 hours |
| 21 st year – 24 th year | 178 hours |
| 25 th year or more | 188 hours |

Employees' accrual rate will change on the first pay period of the payroll calendar year in which they reach the designated years of service.

- 17.1.2 Vacation Accrual Limits

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. Each employee's current vacation balance is shown on the employee's pay check stub and it is the responsibility of the employee to track for compliance with this provision.

- 17.1.3 Payment for Unused Accrued Vacation Leave upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued and not used.

17.2 Vacation Leave

Use of accrued vacation or personal leave is subject to the advance approval of the Department Director or designee. 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 work week, unless he/she 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 determined by the relative length of time served by each employee in the classification in which he/she is employed in a department of the City Government and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employee in such classification. Employees shall submit written requests to their immediate supervisor or designee 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 requests. If a written response is not received by the employee within ten (10) working days, the request may be submitted to the Department Director or designees and/or the Office of Employee Relations. Nothing in this section shall interfere with an established vacation scheduling procedure.

17.3 Computation of Vacation Leave

For purposes of accruing vacation, 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." 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.

17.4 Personal Leave

Effective the first pay period of each payroll year, each full time employee shall be entitled to a total of twenty-four (24) hours per payroll calendar year. Such leave may be scheduled in fifteen (15) minute increments, at any time, subject to approval of the supervisor. Personal Leave is not accrued. Any such leave not taken by the date of termination for employees terminating 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.

17.4.1 Employees hired on or after July 1st shall be entitled to only twelve (12) hours in the payroll calendar year in which they were hired.

17.4.2 Each benefited part-time employee shall be entitled to annual personal leave of twelve (12) hours per year except that in the first payroll calendar year of employment, employees hired before July 1st will get twelve (12) hours of annual personal leave and employees hired on or after July 1st will get six (6) hours of annual personal leave.

ARTICLE 18 SICK LEAVE

18.1 Each part-time and 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. Paid leave for holidays, vacation, compensatory time off, or other paid leave shall be considered 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, or for the care related to the illness or injury of the employee's child, mother, father, spouse or domestic partner registered with the Department of Human Resources.

Up to a total of forty-eight (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.

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, 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 designated representative, 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, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen 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.

18.1.2.4 Accrued sick leave also may be used in accordance with Article 31, Time Donation Programs.

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 he or she, or someone on his or her behalf notifies his or her immediate superior or Department Director, or the Director of Human Resources, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.

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 absences. An employee shall be given reasonable notice prior to the employee's return to work by his/her

supervisor or designee if medical verification is required. If there is a dispute as to the definition of "reasonable notice," this shall solely be determined by the Director of the Office of Employee Relations or designee and is not subject to the grievance procedures of this Agreement.

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 months 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 and shall be separated from City service.

18.1.6.1 Pursuant to Article 13, an employee who is not otherwise entitled to any additional unpaid sick leave may request a leave of absence without pay, subject to approval of the appointing authority or designee.

18.2 Sick Leave Payout

18.2.1 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

18.2.2 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:

18.2.2.1 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.

18.2.2.2 Terminated Employee with Vesting Rights. The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and following such termination, qualifies for retirement and retires under the provisions cited in the code and has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.2.2.3 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.

18.2.2.4 Death of Terminated Employee. The estate of any full-time or eligible part-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code, and has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.2.3 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 \$20 and his or her sick leave balance is 250 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 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. 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 50 hours, they will only be entitled to a sick leave payout of 50 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.

18.2.4 Payout shall be determined as follows.

18.2.4.1 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:

- 18.2.4.2 Less than 400 hours - Hours accumulated x 50% of final hourly rate;
- or 400 - 799 hours - Hours accumulated x 60% of final hourly rate;
- or 800 - 1200 hours - Hours accumulated x 75% of final hourly rate.

- 18.2.5 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 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 in Article 18.1.2.3), including the integration of accrued vacation, compensatory time off, and Sick Leave as provided in Article 19.2, with Workers' Compensation may be separated from City service. In making this determination, the City shall consider the employee's anticipated date of return to work and the operational impact of the extended absence.

19.2 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 Except as otherwise provided herein, each employee who, on July 1, 2017, is a member in good standing of the Employee Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Employee Organization as a condition of retaining membership.
- 20.2 Any employee who, on July 1, 2017, is not a member of the Employee Organization, or any person who becomes an employee after July 1, 2017, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Employee Organization shall thereafter maintain such membership for the duration of the Agreement, except as otherwise provided herein.
- 20.3 Any employee who is presently a member of the Confidential Employees' Organization or who subsequently becomes a member during the extent of this contract may resign from such membership only during the period of June 1, 2018, through June 30, 2018. Employees shall not be required to join the Employee Organization as a condition of employment. Resignation shall be in writing to the City's Municipal Employee Relations Officer with a copy to the Employee Organization.

20.4 The Employee Organization 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 the application of or implementation of the provisions of this Article.

ARTICLE 21 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 regulation, 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 22 BEREAVEMENT LEAVE

22.1 Each full-time employee shall be granted bereavement leave with full pay for up to forty (40) work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within fourteen (14) calendar days following the death of an eligible person. Under extreme circumstances, the fourteen (14) day 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) Parents/Step-parents
- (b) Spouse
- (c) Child/Step-child
- (d) Brother/Sister; Step-brother/sister; Half-brother/sister
- (e) Grandparents/Step-grandparents
- (f) Great grandparents/Step-great grandparents
- (g) Grandchildren
- (h) Domestic Partner
- (i) Sister in-law/Brother in-law/Daughter in-law/Son in-law

22.1.1 A domestic partner, as referenced in Section 22.1, must be the domestic partner registered with the Department of Human Resources.

22.2 No eligible employee shall be granted 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 23 NON-DISCRIMINATION

23.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or handicap. The parties further agree that this Section 23.1 shall not be subject to the Grievance Procedure provided in this Agreement.

23.2 The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Employee Organization, or because of any authorized activity on behalf of the Employee Organization. The parties further agree that this Section 23.2 may be subject to the Grievance Procedure provided in the Agreement.

ARTICLE 24 SUPPLEMENTAL BENEFITS FOR PART-TIME EMPLOYEES

24.1 Any other provisions of this Agreement to the contrary notwithstanding, except as provided in Article 7, part-time employees "indefinitely assigned" to "regularly scheduled part-time positions," as said terms are hereinafter defined shall be eligible for and shall be granted the following supplemental benefits, to-wit:

24.2 Vacation Leave

24.2.1 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:

24.2.1.1 During his/her 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 of vacation leave for each hour worked, exclusive of overtime.

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

24.2.1.3 During his/her first 4,160 hours following his/her first 20,800, in a regularly scheduled part-time position, each such employee shall accrue vacation leave at the rate of 0.06625 hour of vacation leave for each hour worked, exclusive of overtime.

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

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

24.2.2 All part-time employees' maximum vacation accrual amount shall be 120 hours. Any 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.

24.2.3 Any such part-time employee shall be entitled to paid vacation leave only for those days and number of hours he/she is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to the Article.

24.2.3.1 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.

24.3 Sick Leave With Pay

24.3.1 During the term of this Agreement, sick leave with pay shall be granted to part-time employees in the amount of 0.04616 hour 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.

24.3.2 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours he/she is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and assignment made pursuant to this Article.

24.3.3 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 assignment made pursuant to this Article.

24.4 Holiday Benefits

24.4.1 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 entitled to 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 his/her regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

| <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 |

24.4.2 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 holiday.

24.4.3 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 he/she would be entitled to for the hours worked on that day at his/her regular rate of pay, and in addition thereto, he/she shall receive compensation in a sum equal to one-half times his/her regular hourly pay multiplied by the number of hours worked by him/her 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 his/her regular flat daily rate of pay plus room and board.

24.5 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 his/her regularly scheduled part-time position. Such sums of moneys shall be determined in accordance with the following such hours per week and percentages:

| <u>Regularly Scheduled Hours per Week</u> | <u>City Contribution for P/T Employees as Percentage of City Contribution for Full-Time Employees</u> |
|---|---|
| 20-24 hours | 50.0% |
| 25-29 hours | 62.5% |
| 30-34 hours | 75.0% |

24.6 Shift Differential

24.6.1 A swing shift differential of one dollar and fifty cents (\$1.50) an hour shall be paid to employees for each regularly scheduled hour worked after 2:00 p.m. if at least four (4) hours of a regularly assigned scheduled of continuous work hours are worked after 5:00 p.m.

24.6.2 A night (graveyard) shift differential of one dollar and seventy-five cents (\$1.75) per hour shall be paid to employees for each regularly scheduled hour worked after 11:00 p.m. and prior to 8:00 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 11:00 p.m. and before 8:00 a.m.

24.6.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.

24.6.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during the period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.

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

24.7 Educational and Professional Incentives

The City will reimburse each eligible benefited employee 100% of expenses incurred, up to the maximum amounts per fiscal year listed below. Eligible expenses shall be limited to registration, tuition, fees 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. Of the eligible amount indicated in the chart below, a prorated amount may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates 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. City Policy Manual Section - Education Reimbursement outlines additional details of the program. The maximum amounts for eligible benefited employees are based on the employee's established benefit category as follows:

| Benefit Category (scheduled hours) | Maximum Reimbursement | Maximum Reimbursement for Part-Time Benefited Employees for non-college accredited courses and others as listed above. |
|---------------------------------------|--------------------------|---|
| 20-24 hours | \$ 500.00 | \$200.00 |
| 25-29 hours | \$ 625.00 | \$250.00 |
| 30-34 hours | \$ 750.00 | \$300.00 |

24.8 Eligible Employee

24.8.1 As used in this Agreement, the term "regularly scheduled part-time position" shall mean a position within a department designated by the department in writing as requiring at least twenty (20) hours and not more than thirty-four (34) hours of regularly scheduled work per week on a year round basis for an indefinite period of time.

24.8.2 Designations made pursuant to the foregoing may be made or rescinded at any time at the discretion of the City Manager, or the Department with the approval of the City Manager.

24.8.3 As used in this Agreement, the term "indefinitely assigned" shall mean an assignment to a regularly scheduled part-time position without limitation of any kind as to duration. Nothing herein contained, however, shall be construed to limit the right of the Department Director or the City Manager, as contained in Article 6.6, 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.

24.9 Bereavement Leave

Bereavement leave 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 pursuant to Section 22.1; provided, however, that each eligible part-time employee shall be entitled to bereavement leave with pay for a number of hours based on the number of hours per week such part-time employee is indefinitely assigned to working the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

Regularly scheduled hours per week: Hours of Bereavement Leave with Pay:

- | | |
|-----------------------|----------------|
| • 30-34 hours | Up to 30 hours |
| • 25-29 hours | Up to 25 hours |
| • 20-24 hours | Up to 20 hours |

ARTICLE 25 RETIREMENT

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

25.1.1 Administrative costs of the Federated Retirement System are to be paid from the retirement fund.

ARTICLE 26 RETIREE HEALTHCARE FUNDING AND BENEFITS

26.1 The City and the Employee Organization 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 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.

26.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement and that the Employee Organization will support such amendments.

26.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's

actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. 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 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 20, 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.

- 26.4 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 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.
- 26.5 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 Employee Organization will immediately meet and confer over an alternative trust vehicle for the prospective contributions should the IRS determine that the contributions are post-tax. The parties agree that the foregoing resolves the issues underlying unfair practice charge no. SF-CE-972-M filed by the Employee Organization on June 18, 2012. Therefore, the Employee Organization agrees to withdraw the charge no later than fifteen (15) calendar days after the execution of this agreement.
- 26.6 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.
- 26.7 Employees hired into full-time benefited positions on or after September 27, 2013, ("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.
- 26.8 Neither the City nor the Employee Organization waives any rights or assertions, each may have, related to the retiree healthcare benefit through any of the provisions of this Article.

ARTICLE 27 ANNUAL PERFORMANCE EVALUATION

- 27.1 The purpose of the annual performance evaluation is to have formal communication between supervisor and employee regarding job performance.
- 27.2 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 work site 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.

- 27.3 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.
- 27.4 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 thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.
- 27.4.1 If the employee formally receives a key element rating that is below "meets standard" on either an annual or special performance evaluation and is not satisfied with the appraisal, the employee may write a rebuttal within thirty (30) calendar days from the date the employee receives the final performance appraisal. The rebuttal, along with the performance appraisal, will be included in the employee's personnel file. The rebuttal may be in response to the entire appraisal or any particular section(s).
- 27.5 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 to the Department Director or designee within thirty (30) calendar days from the date the employee receives the final performance appraisal. If the employee is dissatisfied with the decision of the Department Director or designee, he/she may, within thirty (30) calendar days from the Department Director's or designee's response, request a hearing with the City Manager or designated representative. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decision previously rendered.
- 27.5.1 The City Manager or designated representative shall hold a hearing within a reasonable time, and within ten (10) work days of the hearing shall inform the employee of the decision. The decision of the City Manager shall be final. This will be the only appeal process applicable to review a performance appraisal. The employee shall have the right to Employee Organization representation at the hearing with the Department Director or the City Manager.
- 27.5.2 If the employee formally receives an overall performance rating that is at or above "meets standards" and is not satisfied with the appraisal, the employee may write a rebuttal within thirty (30) calendar days from the date the employee receives the final performance appraisal. The rebuttal, along with the performance appraisal, will be included in the employee's personnel file. The rebuttal may be in response to the entire appraisal or any particular section(s). If the employee indicates to the supervisor an intent to appeal or rebut the evaluation, the employee may request and receive a copy of the evaluation.

- 27.6 The right of appeal shall not apply to probationary performance ratings.
- 27.7 All employees represented by the Union shall be evaluated using the standard performance evaluation form as designated by Human Resources and the Office of Employee Relations. Any changes to the performance evaluation form shall be provided in advance to the Union pursuant to Article 37 of this agreement.

ARTICLE 28 DISCIPLINARY ACTION

- 28.1 The City of San Jose discipline policy applies to both regular permanent (non-probationary) full-time and regular permanent (non-probationary) part-time benefited employees and is described in the Discipline Policy, contained in the City Policy Manual. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, salary step reduction, demotion and dismissal.
- 28.1.1 Employees may submit a rebuttal to a Letter of Reprimand within thirty (30) days. The rebuttal will be kept in the employee's permanent personnel file.
- 28.1.2 Part-time unbenefited employees subject to separation due to disciplinary action may request a meeting with the Office of Employee Relations.
- 28.2 When an employee is being interviewed and the employee reasonably believes that the investigative interview is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.
- 28.3 Step Reduction. The San Jose Municipal Code defines disciplinary action 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 amount and length of time 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, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.
- 28.4 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 29 PROBATIONARY PERIODS

- 29.1 Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to 80 hours of other cumulative or consecutive paid or unpaid absences.

- 29.2 An employee's probationary period may be extended at the discretion of the City up to a maximum of three (3) months of actual and continuous service. The employee will be notified in writing of the length and reason of the extension.

ARTICLE 30 JOB SHARING

The City will develop procedures for job sharing. These will include procedures for departments to job share existing full-time positions, and to request shared positions in the budget as well as personnel procedures for employee requests, benefits, and other rules.

ARTICLE 31 TIME DONATION PROGRAMS

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

ARTICLE 32 REDUCED WORKWEEK

Full time employees are eligible to apply for reduced workweeks subject to the provisions and conditions in the City of San Jose Reduced Workweek Schedules Policy. Neither the failure of a department to enter into a voluntary reduced workweek agreement with any employee nor the termination by a department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12 of this Agreement.

ARTICLE 33 ALTERNATIVE WORK SCHEDULE

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 into 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 34 HUMAN RESOURCES POOL ASSIGNMENTS

- 34.1 An Human Resources pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment shall be granted regular employment status and receive benefits if the following conditions are met.
- A vacancy exists in a class in the department which the employee is eligible to fill.
 - The department selects the employee for regular employment status.
- 34.2 A Human Resources pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment and who does not meet the conditions listed in 34.1 shall not be eligible for benefits and shall be removed from the position.
- 34.3 Human Resources Pool employees who are assigned and work in excess of forty (40) hours per week shall be compensated at the time and one-half (1-1/2) rate. A part-time employee who is assigned and works in excess of forty (40) hours per week may elect to either be paid for such overtime or credited with compensatory time off, provided the following:

- a. the employee makes such election during the pay period in which the overtime is worked.
 - b. in the event the employee requests payment for such overtime, the department's budget can accommodate such payment.
- 34.4 However, at no time shall an Human Resources pool employee's compensatory time balance exceed forty (40) hours. Once an employee's compensatory time balance reaches forty (40) hours, employees shall be paid for all time assigned and worked in excess of forty (40) hours per week.
- 34.5 Notwithstanding any other provision of Section 6.9 to the contrary, the Director of a Department 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:
 - 34.5.1 be paid for all accrued, unused compensatory time, OR
 - 34.5.2 be paid for all but twenty-four (24) hours of such accrued, unused compensatory time, OR
 - 34.5.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.10.
- 34.6 Any employee not making an election will retain his/her compensatory time, subject to other provisions of this Section.
- 34.7 If an Human Resources pool employee is scheduled and reports to work for a shift which is then canceled, the employee shall, at the City's discretion, either work a minimum of two (2) hours or be credited with two (2) hours work at the employee's straight time pay rate. The employee is not entitled to the two (2)-hour minimum if:
 - a. the pool employee is notified prior to the start of the shift that the shift is canceled; or
 - b. the pool employee is scheduled to work less than two (2) hours.

ARTICLE 35 EMPLOYEE LISTS

The City shall provide at no charge to the Union, a monthly printout listing changes in membership status by employee name by department and position, worksite location (to the extent available), and full-time equivalency. The City shall also provide at no charge to the Union, a quarterly printout listing bargaining unit employees alphabetically by employee address, position title, employment date, full-time equivalency, and leave of absence status. The Union agrees that such information will be treated in a confidential manner.

ARTICLE 36 NEW EMPLOYEE ORIENTATION

The City shall provide designated CEO representative(s) reasonable access to new employees during the new employee orientations for full-time and part-time employees, in conjunction with the City's Procedures and Policies to provide information on the union. Attendance at any presentations by CEO shall be voluntary on the part of the new employee. The Office of Employee Relations shall work out arrangements with designated CEO representatives.

ARTICLE 37 PERSONNEL FILES

37.1 The City Human Resources Director shall keep a central personnel file for each employee; departments, at their option, may keep a duplicate departmental personnel file. An employee, or with written authorization by the employee, his/her designee, shall be permitted to examine their own personnel file on appointment during normal business hours. Employees shall be provided copies of materials in their personnel files at a cost not to exceed the actual cost of duplication, unless such materials are to be used in conjunction with the processing of a grievance or appeal filed by the employee.

37.1.1 Items excluded from the examination of the personnel file are:

1. Items obtained prior to the employment of the person involved, such as reference checks and pre-employment examinations.
2. Items obtained in connection with a promotional and/or interview examination.

37.2 Adverse comments, except material mentioned above, shall not be entered or filed unless the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right to enter and have attached to any such adverse comments his/her own written comments within thirty (30) calendar days of receipt.

ARTICLE 38 ADVANCE NOTICE

38.1 Except in cases of emergency, advance written notice shall be given to the Union affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, any board or commission, or department, and shall be given ten (10) working days to respond prior to implementation.

38.2 In cases of emergency when the City Council, City Manager or Department Director determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice, City management shall provide such notice at the earliest practical time.

ARTICLE 39 CONTRACTING OUT

39.1 The City agrees to meet and confer with the Employee Organization prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

ARTICLE 40 HIRING POLICY

40.1 The City of San Jose Hiring Policy contained in the City Policy Manual contains the procedures and policies for hiring. The Hiring Policy shall include a reference to Salary Resolution #51870, which contains definitions of various terms including, but not limited to, step placement, promotion, lateral transfer, and demotion.

ARTICLE 41 EMPLOYEE COMMUTE BENEFIT PROGRAM

The Employee Commute Benefit Program shall be as follows

- 41.1 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.
- 41.2 Participation in the Santa Clara Valley Transit Authority ("VTA") Eco Pass Program will be available to eligible employees, subject to the terms of the Employee Commute Benefit Program as defined in Article 41.1.
- 41.3 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.

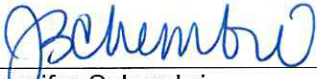
THIS AGREEMENT executed on the 6th of April 2017, between the City of San Jose and the Confidential Employees' Organization, AFSCME, Local No. 101, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

This Memorandum of Agreement is subject to approval by the City Council of the City of San Jose and the appropriate representative of the Confidential Employees' Organization, AFSCME, Local No. 101.

FOR THE CITY:



Norberto Dueñas
City Manager



Jennifer Schembri
Director of Employee Relations

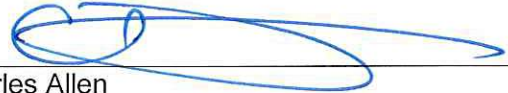


Marco Mercado
Assistant to the City Manager
Office of Employee Relations

FOR THE UNION:



LaVerne Washington
President
CEO, AFSCME Local 101



Charles Allen
Business Agent
AFSCME, Local 101



Linda Alexander
Executive Board Member
CEO, AFSCME Local 101

**EXHIBIT I
CEO SALARY RANGES
(FY 2017-2018)**

| Job Code | Job Code Title | Sal Adm Plan | Union Code | FLSA | HRLY RATE Min | HRLY RATE Top | BiWkly Min | BiWkly Top |
|-----------------|-------------------------------|---------------------|-------------------|-------------|----------------------|----------------------|-------------------|-------------------|
| 1159 | Administrative Assist C | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |
| 8159 | Administrative Assistant C PT | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |
| 1627 | Analyst I C | CEO | 101 | N | 32.27 | 39.24 | 2,581.60 | 3,139.20 |
| 1630 | Analyst I C PT | CEO | 101 | N | 32.27 | 39.24 | 2,581.60 | 3,139.20 |
| 1632 | Analyst II C | CEO | 101 | N | 35.22 | 42.81 | 2,817.60 | 3,424.80 |
| 1635 | Analyst II C PT | CEO | 101 | N | 35.22 | 42.81 | 2,817.60 | 3,424.80 |
| 8028 | Assoc Legal Analyst | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |
| 8029 | Assoc Legal Analyst PT | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |
| 1167 | Legal Admin Assist I C | CEO | 101 | N | 25.77 | 31.34 | 2,061.60 | 2,507.20 |
| 1153 | Legal Admin Assist I C PT | CEO | 101 | N | 25.77 | 31.34 | 2,061.60 | 2,507.20 |
| 1168 | Legal Admin Assist II C | CEO | 101 | N | 29.36 | 35.68 | 2,348.80 | 2,854.40 |
| 1154 | Legal Admin Assist II C PT | CEO | 101 | N | 29.36 | 35.68 | 2,348.80 | 2,854.40 |
| 1165 | Legal Admin Assist Trainee | CEO | 101 | N | 23.27 | 28.3 | 1,861.60 | 2,264.00 |
| 2123 | Legal Analyst I | CEO | 101 | N | 32.27 | 39.24 | 2,581.60 | 3,139.20 |
| 2128 | Legal Analyst I PT | CEO | 101 | N | 32.27 | 39.24 | 2,581.60 | 3,139.20 |
| 2120 | Legal Analyst II | CEO | 101 | N | 35.22 | 42.81 | 2,817.60 | 3,424.80 |
| 2118 | Legal Analyst II PT | CEO | 101 | N | 35.22 | 42.81 | 2,817.60 | 3,424.80 |
| 8555 | Network Engineer C FT | CEO | 101 | N | 44.13 | 53.67 | 3,530.40 | 4,293.60 |
| 8556 | Network Engineer C PT | CEO | 101 | N | 44.13 | 53.67 | 3,530.40 | 4,293.60 |
| 8550 | Network Technician I C FT | CEO | 101 | N | 26.52 | 32.32 | 2,121.60 | 2,585.60 |
| 8557 | Network Technician I C PT | CEO | 101 | N | 26.52 | 32.32 | 2,121.60 | 2,585.60 |
| 8551 | Network Technician II C FT | CEO | 101 | N | 31.19 | 37.91 | 2,495.20 | 3,032.80 |
| 8552 | Network Technician II C PT | CEO | 101 | N | 31.19 | 37.91 | 2,495.20 | 3,032.80 |
| 8553 | Network Technician III C FT | CEO | 101 | N | 34.56 | 42.03 | 2,764.80 | 3,362.40 |
| 8554 | Network Technician III C PT | CEO | 101 | N | 34.56 | 42.03 | 2,764.80 | 3,362.40 |
| 1127 | Office Specialist I C | CEO | 101 | N | 19.61 | 23.88 | 1,568.80 | 1,910.40 |
| 1129 | Office Specialist I C PT | CEO | 101 | N | 19.61 | 23.88 | 1,568.80 | 1,910.40 |
| 1131 | Office Specialist II C | CEO | 101 | N | 21.01 | 25.54 | 1,680.80 | 2,043.20 |
| 1134 | Office Specialist II C PT | CEO | 101 | N | 21.01 | 25.54 | 1,680.80 | 2,043.20 |
| 1157 | Secretary C | CEO | 101 | N | 26.17 | 31.82 | 2,093.60 | 2,545.60 |
| 1158 | Secretary C PT | CEO | 101 | N | 26.17 | 31.82 | 2,093.60 | 2,545.60 |
| 1161 | Secretary To Mayor | CEO | 101 | N | 30.14 | 36.65 | 2,411.20 | 2,932.00 |
| 1623 | Staff Technician | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |
| 1660 | Staff Technician PT | CEO | 101 | N | 28.81 | 35.02 | 2,304.80 | 2,801.60 |

**Confidential Employee's Organization
Enrollment Opportunity**

If you have questions about membership in the Confidential Employee's Organization (CEO), Local 101, AFSCME, AFL-CIO, please contact a CEO representative or the AFSCME Local office at (408) 277-4595. Or, if you would like to join CEO, please contact your representative.

For active side letters, please see the City's CEO website at:

<http://www.sanjoseca.gov/index.aspx?nid=524>