

Memorandum of Agreement

CITY OF SAN JOSE

AND

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL NO. 332
(IBEW)**



July 1, 2017 through June 30, 2021

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL NO. 332
2017 - 2021 MEMORANDUM OF AGREEMENT**

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Exhibits

Exhibit I Salary Schedules

This Memorandum of Agreement hereinafter referred to as the "Agreement", entered into by the by the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Brotherhood of Electrical Workers, Local No. 332, hereinafter referred to as the "Union" or "Organization."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective July 1, 2017, except where otherwise provided, and shall remain in effect through June 30, 2021. 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 Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

ARTICLE 2 RECOGNITION

- 2.1 Pursuant to Resolution #39367 of the City Council of the City of San Jose and the provisions of applicable State law, the International Brotherhood of Electrical Workers Union, Local No. 332, hereinafter referred to as the "Union" is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions there from shall constitute an appropriate unit.
- 2.2 The City agrees to meet and confer with the International Brotherhood of Electrical Workers Union, Local #332, 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 3 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is to promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the International Brotherhood of Electrical Workers Union, Local No. 332.

ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution #39367 of the Council of the City of San Jose and in Part 2 - Definitions, of Chapter 3.04 of Title III of the San Jose Municipal Code unless it is apparent from the context that a different meaning is intended.

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Wages

5.1.1 3% general wage increase effective Fiscal Year 2017-2018. Effective June 17, 2018, all salary ranges for employees holding positions in classifications assigned to IBEW shall be increased by approximately 3%.

5.1.1.1. In lieu of receiving a general wage increase retroactive to FY 17-18, full-time employees holding positions in classifications assigned to IBEW shall receive a one-time lump sum non-pensionable payment equivalent to approximately 3% for the time period of June 18, 2017, through June 16, 2018, using the employee's base pay as of June 18, 2017. This one-time lump sum non-pensionable payment equivalent shall be made to full-time employees within two (2) full pay periods after June 17, 2018. To receive the one-time lump sum non-pensionable payment, a full-time employee must have been employed in an IBEW represented position on June 18, 2017, and still employed in an IBEW represented position effective June 17, 2018.

5.1.2 5% ongoing non-pensionable compensation increase effective Fiscal Year 2018-2019. Effective July 1, 2018, all employees holding positions in classifications assigned to IBEW shall receive an approximate 5% ongoing non-pensionable compensation increase.

5.1.3 3% general wage increase effective Fiscal Year 2019-2020. Effective June 30, 2019, all salary ranges for employees holding positions in classifications assigned to IBEW shall be increased by approximately 3%.

5.1.4 3% general wage increase effective Fiscal Year 2020-2021. Effective June 28, 2020, all salary ranges for employees holding positions in classifications assigned to IBEW shall be increased by approximately 3%.

5.2 The salary steps for all classifications represented by IBEW shall be approximately 2.5% between each step.

5.3 Shift Differential

5.3.1 Employees regularly assigned to work a swing shift, as defined herein, shall be paid a shift differential of one dollar and fifty-five cents (\$1.55) an hour for each hour, to the nearest fifteen minutes, actually worked. Employees regularly assigned to work a graveyard shift, as defined herein, shall be paid a shift differential of one dollar and seventy-five cents (\$1.75) an hour for each hour, to the nearest fifteen minutes, actually worked. For purposes of this section "regularly assigned" shall be defined as any regularly scheduled shift worked in excess of one shift during a pay period.

5.3.2 A swing shift is any regular shift of eight (8) hours or more regularly scheduled to start between the hours of 2:00 p.m. and 11:59 p.m.

5.3.3 A graveyard shift is any regular shift of eight (8) hours or more regularly scheduled to start between the hours of 12 Midnight and 5:59 a.m.

- 5.3.4 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.
- 5.3.5 Employees shall continue to be paid such shift differential while on vacation, compensatory time and/or personal leave of forty (40) consecutive hours or longer as though such person had continued to work his/her regularly assigned swing or graveyard shift during the period of vacation. City observed holiday hours may be credited towards meeting the 40 consecutive hours requirement, however, holiday leave hours do not qualify for payment of shift differential.

5.4 Working in a Higher Classification

- 5.4.1 Upon specific assignment by the Department Director, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignments shall be made only to existing authorized positions, which are not actively occupied due to the temporary absence of the regularly appointed employee.
- 5.4.2 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 one five percent (5%) higher than the rate received by the employee in the employee's present class, provided, however, that the employee shall not receive any compensation unless the assignment is for four (4) hours or longer. In such event, the employee shall be compensated as provided above for the entire shift. 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.
- 5.4.3 As an alternative to making appointments to a vacant position, a Department may, upon the approval of the Office of the City Manager, assign an employee to work in a higher classification for a period of time not to exceed six (6) months. The employee will be compensated in accordance with section 5.3.2. At the expiration of the period of assignment, the assigned employee shall return to his/her regular assignment. The Department may then request authorization to fill the position on a regular basis or return it to vacant status. Department Directors are encouraged to review all situations wherein employees are working in a higher class to determine if those functions are necessary to the organization and should be continued. If the functions are no longer necessary, the position should be eliminated. This shall apply to employees who are represented by the IBEW.

5.5 Supervising Temporary Electricians

Notwithstanding the eligibility requirements of Section 5.3, employees are eligible for higher class pay under the circumstances specified below:

- 5.5.1 When two or more temporary unclassified Electricians, pursuant to the Temporary Electrician Agreement in effect between the City of San Jose and IBEW, are working on the same project, the Department Director or designee shall designate a "lead" worker for the project.
- 5.5.2 In the event the Department Director or designee assigns "lead" worker duties to an Electrician over a temporary Electrician, the employee shall be eligible for higher class pay for time spent actually performing those duties at the rate in

the salary range of the higher class which is approximately one (1) salary rate (step) higher than the rate received by the employee in the employee's present class, provided, however, that the employee shall not receive any compensation unless the assignment is for four (4) hours or longer. In such event, the employee shall be compensated as provided above for the entire shift.

- 5.5.3 The Department Director or designee retains the right of selection and assignment of "lead" worker duties. However, temporary unclassified Electricians shall not be eligible for assignment as a "lead" worker.

5.6 Health Insurance Coverage

- 5.6.1 All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).

- 5.6.2 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 HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced Non-Deductible HMO plan.

The Kaiser Permanente 1500 Deductible HMO Benefit Plan will be available to employees represented by IBEW in addition to the existing plan options.

- 5.6.3 A \$25 Co-pay plan shall be implemented for all HMO plans, including the following:

- a. Office Visit Co-pay shall be \$25
- b. Prescription Co-pay shall be \$10 for generic and \$30 for brand name
- c. Emergency Room Co-pay shall be \$100
- d. Inpatient/Outpatient procedure Co-pay shall be \$100

- 5.6.4 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to approval by the City and ratification by the employee organization.

- 5.6.5 Payment-in-Lieu of Health and/or Dental Insurance Program

- 5.6.5.1 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 the payroll calendar year 2016, which starts December 20, 2015.

5.6.5.2 Employees who qualify for and participate in the payment-in-lieu 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.

5.6.5.3 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 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.

5.6.5.4 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 Handbook) occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event will be required to wait until the next open enrollment period to enroll in the payment-in-lieu program. Enrollment in the payment-in-lieu insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.6.5.5 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 workweek of less than thirty-five (35) regular hours per week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.6.5.6 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.

5.6.5.6.1 **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.

5.6.5.6.2 **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 dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

5.6.6 Any employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

5.7 Dental Insurance

5.7.1 The City will provide dental coverage for eligible full-time employees and their dependents. As of the date of this agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook. A copy of this document shall be available upon request in the Human Resources Department. All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).

The City will provide dental coverage in the lowest priced plan for eligible full-time employees and their dependents. If an employee selects a plan other than the lowest priced plan the City will pay 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 for the selected plan. As of the date of this agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook. A copy of this document shall be available in the Human Resources Department.

5.7.1.1 All active, eligible, full-time employees and their eligible dependents that are enrolled in the Delta Dental Plan will receive a lifetime maximum benefit of \$2,000 for orthodontic coverage.

5.7.1.2 Each active, eligible, full-time employee and eligible dependents that are enrolled in the Delta Dental Plan shall receive annual maximum coverage of \$1500.00.

5.7.2 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

5.8 Call Back Pay

5.8.1 Any employee who is called back to work after he/she has worked his/her scheduled shift and has left work shall be compensated for the time worked, or for three (3) hours at the appropriate rate (1.5), whichever is greater. An employee may elect to either be paid for such call-back assignment or be credited with compensatory time off. The Department will make every effort to accommodate such election, provided that:

- the election of compensatory time off does not interfere with the Department's or the City's ability to recover funds related to the call-back assignment;
- the employee makes such election during the pay period in which the call-back assignment is submitted for compensation; and
- in the event the employee requests payment for such call-back assignment, the Department's budget can accommodate such payment.

Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.

5.8.2 An employee who is called back shall be entitled to earn the three (3) hour minimum call back compensation only once during an eight (8) hour shift; for subsequent call backs during the same shift, the employee shall be credited with the time actually worked or for fifteen minutes at the appropriate rate, whichever is greater.

5.8.3 To the extent possible, when an employee has worked in excess of eighteen (18) cumulative hours within a twenty-four (24) hour period, beginning from the start of their regularly scheduled shift, upon request by the employee, the Department Director or designee may approve the time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

5.9 Stand-by Pay

Employees specifically assigned to stand-by duty shall be compensated for such assignment with one (1) hour at the appropriate rate (1.5) for each eight (8) hours or portion thereof greater than or equal to four (4) hours of such stand-by duty performed on a regularly assigned work day or on a regularly scheduled day off. An employee may elect to either be paid for such stand-by assignment or be credited with compensatory time off. The Department will make every effort to accommodate such election, provided that:

- the election of compensatory time off does not interfere with the Department's or the City's ability to recover funds related to the stand-by assignment;
- the employee makes such election during the pay period in which the stand-by assignment is submitted for compensation; and
- in the event the employee requests payment for such stand-by assignment, the Department's budget can accommodate such payment.

Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.

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

5.10 Jury Duty

Each full time or part-time employee who is eligible for benefits that 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 their regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify their immediate supervisor.

Employees assigned to regular shifts:

5.10.1 Jury Selection Process and Jury Impanelment. Employees assigned to a Monday through Friday day shift which includes all employees regularly assigned to work any shift scheduled to begin between 6:00 a.m. and 1:59 p.m. shall be subject to the following for both the jury selection process and jury impanelment:

1. If the employee spends five or more hours in either the selection process or jury impanelment, the employee need not return to work. For this, the employee receives the regular base pay for that shift and shall pay to the City the amount received from the court, excluding mileage.
2. If the employee spends less than five hours in either the selection or jury impanelment processes, they must report to work and complete their shift, minus the time spent in the selection process. For this, the employee will receive their regular base pay rate for that shift and shall pay to the City the amount received from the court, excluding mileage.
3. If the employee spends less than five hours in either the selection or jury impanelment processes and does not return to work, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee. With prior approval from the employee's supervisor, the employee shall be paid for the employee's entire shift provided that the employee shall be permitted to take accrued compensatory time or available vacation time in an amount equal to the number of hours remaining on the employee's shift after the employee's release by the court.
4. Employees are not eligible for overtime due to time spent in the jury selection process or jury impanelment.

Employees assigned to shifts other than regular shifts (as defined above):

5.10.2 Jury Selection Process. Employees assigned to a shift regularly scheduled to start between the hours of 2:00p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are required to appear for jury selection process shall be subject to the following:

1. For purposes of providing employees adequate rest before appearing for jury selection, employees shall be allowed to adjust their shift to an end time no later than 1:00 a.m. on the morning they are required to appear for jury selection.
2. If the employee spends five or more hours in the selection process, the employee need not report to work for the following shift if it is the next calendar day. For this, the employee receives the full day's pay for that shift and shall pay to the City the amount received from the court, excluding mileage.

3. If the employee spends less than five hours in the selection process, the employee shall report to work for their next scheduled shift. Hours spent in the selection process will be deducted from either the beginning or end of the next shift, pending supervisor's approval. For this, the employee will receive a full day's pay and shall pay to the City the amount received from the court, excluding mileage.
4. Employees are not eligible for overtime due to time spent in the jury selection process.

5.10.3 Jury Impanelment for Employees Assigned to a Swing or Night Shift. Employees assigned to a shift regularly scheduled to start between the hours of 2:00 p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are selected to serve on a jury shall be subject to the following:

1. Employees shall be temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m., Monday through Friday. This temporary schedule change shall only apply to employees who are selected to serve on a jury, not those who are called to jury selection.
2. The temporary schedule change shall begin on the first day of the workweek following jury impanelment. Until the temporary shift change takes effect, the provisions applicable to jury selection for employees on alternate shifts shall apply.
3. Once an employee is temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m. Monday through Friday, the provisions applicable to jury duty for employees on regular Monday through Friday day shifts shall apply.
4. Upon completion of jury duty, the employee will resume their normal work schedule on the first day of the workweek following release from jury duty.

5.11 Witness Leave

- 5.11.1 Each employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of 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 time 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 and is in a position adverse to the City.
- 5.11.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with his/her employment, shall be credited with overtime for the time spent by him/her in court, or for two (2) hours, 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 and is in a position adverse to the City.
- 5.11.3 Upon service of a 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 in response thereto.

5.12 Educational and Professional Incentives

5.12.1 The City will reimburse each employee 100% of expenses incurred, up to \$1000 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 \$1000.00 amount, up to \$600.00 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. In no event shall tuition reimbursement received from this program plus reimbursement from other educational incentive programs exceed the total cost of registration, tuition, fees, and textbooks. City Policy Manual Section 4.3.1 outlines additional details of the program.

5.12.2 If an employee is denied educational and professional incentives under the requirements set forth in Section 5.11.1 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.

5.13 Use of Private Automobile--Mileage Reimbursement

Each employee of the City authorized by the City Manager or his/her designee to use his/her private automobile in the performance of the duties of his/her 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.

5.14 Life Insurance

The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.

5.15 Meal Allowance

In the event an employee is assigned to work two consecutive shifts, the City shall provide the employee with \$10.00 as a meal allowance.

5.16 Protective Footwear

The City agrees to provide a voucher for the purchase of protective footwear for up to \$200.00 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. For purposes of this section a calendar year is twelve (12) calendar months from the time an employee receives the voucher.

5.17 Tools

The City of San Jose shall provide any tools (including hand tools) required by employees represented by the Union, to perform the duties of their position, subject to approval by the Department Director or designee. The tools will be the property of the City of San Jose.

5.18 Protective Prescription Safety Glasses

The City agrees to reimburse eligible employees who require the use of prescription lenses and are in positions that require the use of protective safety glasses for the purchase of protective prescription safety glasses for up to \$200.00 for full-time employees when it is determined by the Director of Human Resources, or designee, that protective prescription safety glasses are required. The City will replace protective prescription safety glasses as needed, but no more than once per calendar year. An individual may select an approved style that is more expensive than the City maximum by paying the difference.

5.19 Annual Performance Appraisals

Employees shall not receive an automatic salary step increase if they have an Annual Performance Appraisal with an overall rating below that of "Meets Standard" dated within twelve (12) months prior to the salary step increase.

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.

6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.

6.3 The normal work schedule for full-time employees shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.

6.4 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 such a schedule shall be given two (2) consecutive days off, even though the days off are in different workweeks except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.

6.5 The Department Director, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and workweek for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.

6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. With the exception of holiday leave, paid time off shall not be considered time worked for the purpose of calculating eligibility for overtime.

6.6.1 Double-backs Employees at the Water Pollution Control Plant who work and complete two (2) non-consecutive eight (8) hours shifts or longer within a twenty-four (24) hour period shall be compensated with a four (4) hour premium at the 1.0 rate.

6.6.2 For overtime work, volunteers will be asked first, whenever possible.

- 6.7 Notwithstanding 6.6 above, any employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours.
- 6.8 Except as provided in 6.7 above, overtime worked shall be compensated, at the time and one-half (1-1/2) rate, by compensatory time. However, the Department Director or designee may authorize payment in lieu of compensatory time where providing such compensatory time would impair Departmental operations or efficiency. Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.
- 6.8.1 The Department Director may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the Department. This announced intent may apply to an entire Department or to a specified section(s) of a Department. The announcement will also specify a date by which time each affected employee must elect to either:
- a) be paid for all accrued, unused compensatory time, or
 - b) be paid for all but 40-hours of such accrued, unused compensatory time, or
 - c) retain all accrued, unused compensatory time, subject to other applicable provisions of this Article 6.
- 6.9 Compensatory time credited to an employee, and which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 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 To the extent possible a fifteen (15) minute rest period will be provided in each half of the regularly scheduled work shift. In addition, and to the extent possible, employees will be provided a fifteen (15) minute rest period after every four (4) hours of work for those hours worked outside the employee's 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.

ARTICLE 7 DUES AND AGENCY FEE DEDUCTION

- 7.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a Representation Unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and bylaws 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.
- 7.2 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 Union as regular monthly dues.

- 7.3 Deductions shall be made from wages earned by the employee for the first two 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 Union not later than fourteen (14) days following the pay period in which the deductions were made.
- 7.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 7.5 If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 7.6 It is expressly understood and agreed that the Union will refund to the employee any union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 7.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 7.8 Agency Fee
- 7.8.1 Employee Rights
- 7.8.1.1 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.
- 7.8.1.2 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 7.8.6 below.
- 7.8.2 Employee's Obligation to Exclusive Representation An employee who is a member of the Union on July 1, 2018, and any employee who becomes a member after July 1, 2018, shall maintain such membership, except as provided during the change of status period set forth in Section 20.3.
- 7.8.3 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 7.8.6 below. In this case the employee must designate a charity from Section 7.8.6.1 to which the appropriate amount will be paid through payroll deduction.

7.8.3.1 If a person fails to make any of the designations set forth above within the thirty (30) day period, they will be given notice by the City that 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.

7.8.3.2 The Union specifically agrees that the provisions of Section 7.8.7 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.

7.8.4 Definition of Agency Fee The Agency Fee collected from non-member bargaining unit employees pursuant to Section 7.8.2 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.

7.8.5 Notice of Objection to Union Expenditures

The Union shall provide an annual written notice to each nonmember who will be required to pay an agency fee. The notice shall include:

1. The amount of the Union's dues and the agency fee;
2. The percentage of the agency fee amount that is attributable to chargeable expenditures and the basis for this calculation;
3. The amount of the agency fee to be paid by a nonmember who objects to the payment of an agency fee amount that includes nonchargeable expenditures. An agency fee objection must be filed with the Union within 30 days following distribution of the annual written notice.

7.8.6 Employees Exempted From Obligation to Pay Union Any employee shall be exempted from the requirements of Section 7.8.2 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.

7.8.6.1 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.

7.8.7 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.

7.8.9 Rescission of Agency Fee Provisions Pursuant to Government Code Section 3502.5, this Article 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.

ARTICLE 8 MANAGEMENT RIGHTS

8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.

8.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Brotherhood of Electrical Workers, Local No. 332 representing such employees.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandum of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.

- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

ARTICLE 10 FULL FAITH AND CREDIT

10.1 It is understood and agreed that:

10.1.1 Participation by any employee in a unit represented by the 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 any person, or participation in a strike, work stoppage or slowdown, or the failure to perform lawfully required work shall subject the employee to a disciplinary action up to and including discharge.

10.1.2 If the Employee Organization, its officers or its authorized representatives violate provision 10.1.1 above or tolerate the violation of provision 10.1.1 above and after notice to responsible officers or business representatives of the 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 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 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, entitled Grievance Procedure.

ARTICLE 11 SAFETY

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The employee organization/union 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 shall be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the determination of the City's designated safety official is that the assignment is not unsafe, such determination and the reasoning for it shall be placed in writing and signed by the designated safety official.
- 11.4 No provisions of this Article shall be subject to the grievance procedures of this Agreement.

ARTICLE 12 GRIEVANCE PROCEDURE

12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the Representation Unit, the Union representative may file a grievance on behalf of such employees.

12.2 Procedures

12.2.1 Grievances involving the interpretation or application of this Memorandum of Agreement shall be processed in accordance with the procedures set forth in this Article 12.

12.2.2 Grievances involving Resolution #39367, as amended, including any grievance pursuant to Section 22 of that Resolution, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.

12.3 STEP I

12.3.1 An employee may present the grievance orally either directly or through his/her Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

12.3.2 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, on forms provided, 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 The written grievance shall contain a complete statement of the grievance, the alleged facts upon which the grievance is based, the reasons for the appeal, the section or sections of the Memorandum of Agreement relied upon or claimed to have been violated, and the remedy requested. The grievance shall be signed and dated by the employee.
- 12.4.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Union 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 complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer or designee within five (5) working days following receipt of the written decision at Step II.
- 12.5.2 Within fifteen (15) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall hold a meeting with the employee, the appropriate Union representative, the Department Director or designee to discuss the matter. A written decision shall be given the employee or the appropriate Union representative within five (5) working days following the meeting.
- 12.5.3 If the decision of the Municipal Employee Relations Officer or designee 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) calendar days following receipt by the employee of the written answer at Step III.
- 12.6.2 Within fourteen (14) calendar 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 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 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 Union.
- 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 and the court reporter. 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 provisions of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 12.6.9 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 General Provisions

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

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

12.8 Stewards

- 12.8.1 A designated Steward shall be authorized release time to appear at Civil Service Commission or City Council meetings when such bodies are considering matters affecting the Union, to attend Federated Retirement Board meetings, and to attend meetings to which he/she is called by the City Administration regarding matters affecting the Union. The City and the Union acknowledge that Stewards are often in a position to facilitate settling grievances before they advance into a formal stage. Release time is not authorized for lobbying or political purposes.
- 12.8.2 The union may designate a total of four (4) Departmental Stewards. Stewards shall be selected from the following Departments and shall not exceed one designation per Department: Airport, Environmental Services (ESD), Information Technology (Communications), General Services, and Transportation.
- 12.8.2.1 The union may also designate one (1) at large Chief Steward. In addition to those duties required of a Steward, the Chief Steward has special responsibilities. The Chief Steward may serve as the communication link between the Union and the City and be authorized reasonable release time in an attempt to resolve conflicts.
- Paid release time will not be provided to both the Chief Steward and a Departmental Steward to address the same grievance or discipline unless Employee Relations receive prior approval.
- 12.8.3 The Union 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.
- 12.8.4 A Steward shall function under the terms of the grievance procedure 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.

- 12.8.5 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.

If 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.

- 12.8.6 In the event the parties agree that a Steward or other representative of the Union is permitted to investigate and/or process a grievance other than as provided in 12.8.4 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.
- 12.8.7 The Union agrees to properly notify the Municipal Employee Relations Officer of any changes of Stewards.
- 12.8.8 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 Union and City representatives according to an outline of such training activities to be submitted by the Union and approved by the City prior to the conduct of any such training sessions.
- 12.8.9 The City agrees to provide up to three (3) hours of paid release time every other month (six times per year) for up to four (4) Stewards and one (1) Chief Steward designated by the Union for the purpose of attending the Union's Stewards meeting, if such a meeting is scheduled.

12.9 Alternative to the Grievance Procedure

- 12.9.1 As an alternative to the formal grievance procedure, IBEW and the Office of Employee Relations may meet on an informal basis and attempt to resolve problems which arise involving contract interpretation, Civil Service Rules, City Policy Manual (CPM), or other matters affecting the relationship between the Union and the City.
- 12.9.2 The Office of Employee Relations and IBEW may review an issue on an ad hoc basis on its merits and its relationship to the contract. The result of these discussions may be:
- 1) To create a side agreement;
 - 2) To defer the issue until the next contract;
 - 3) To change a practice to conform to the provisions of the contract; and/or
 - 4) To maintain the status quo.
- 12.9.3 If the issue cannot be resolved through this process, the Union maintains the option to proceed through the grievance procedure, if the issue is grievable in accordance with the definition of section 12.1 of this Memorandum of Agreement.

ARTICLE 13 LEAVES OF ABSENCE

- 13.1 By written request of the employee through the "Request for Leave of Absence" form, the appointing authority, or 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.
- 13.2 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 workday after the effective date of the cancellation, or on the first scheduled workday following the expiration of a leave, shall be considered to have voluntarily resigned 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 the position 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 to have voluntarily resigned 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 prior to the commencement of the second consecutive regular 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 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 the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 14.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Human Resources Director. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Human Resources 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 he/she elected to be placed on layoff or to any higher classification to which he/she 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 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-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 Human Resources Director, be returned to the Reinstatement Eligible List.
 - 14.6.5 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to 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 The Union may use designated portions of City bulletin boards in Departments that have employees in the Representation Unit for which the employee organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
 - 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer.
- 15.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the whole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.

- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards is to be allocated to employee organizations.
- 15.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

16.1 Except as 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 specified days and on no other day, during the term of this Agreement:

- | | |
|--|--|
| <ul style="list-style-type: none"> 16.1.1 New Years Day Martin Luther King Day President's Day Cesar Chavez Day Memorial Day Independence Day Labor Day | <ul style="list-style-type: none"> Columbus Day Veterans Day Thanksgiving Day Day After Thanksgiving Christmas Eve Day Christmas 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 An employee shall also be eligible for paid holiday time on 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 additional holidays or trades 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 Director 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. Except as otherwise provided for employees on alternate work schedules (see section 28.3), 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 the employee's regular rate of pay, and in addition thereto, 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, Subsection 6.8 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 Each part-time employee 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.
- 16.5 Except as otherwise provided for employees on alternate work schedules (see section 28.3), 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 compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned work day. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.8 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 lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.
- 16.6 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.

16.7 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 lost time during the closure period. Employees who take lost time during the closure shall continue to receive the following accruals: vacation, sick leave, citywide and Department seniority.

ARTICLE 17 VACATIONS AND PERSONAL LEAVE

- 17.1 Each eligible full-time employee shall be granted vacation leave with pay in accordance with the following:
- 17.1.1 Employees shall accrue a leave of absence with full pay for vacation purposes, in the amount specified below for each cycle of 26 full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of employment as specified.

<u>Years of Service</u>	<u>Accrual Rate per paid hour</u>	<u>Hours of Vacation per 26 Pay Period Cycle</u>
First 5 years	0.038462	80 hours
6th - 10th year	0.057693	120 hours
11th and 12th year	0.065385	136 hours
13th and 14th year	0.073077	152 hours
15th – 20th year	0.080770	168 hours
21st – 24th year	0.085577	178 hours
25 or more years	0.090385	188 hours

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.

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 vacation leave which he/she may then have accrued and not used.

17.2 Vacation Leave

Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such Department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a workweek, unless 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 given in order of seniority. For purposes of this section "seniority" 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 employees in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical.

17.3 Computation of Vacation Leave

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

17.3.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status.

17.4 Personal Leave

Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of twenty-four (24) hours per payroll calendar year. Such leave may be scheduled in fifteen 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. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than 16 hours of Personal Leave in any given calendar year.

17.4.1 Full time employees hired on or after July 1 of each payroll calendar year shall be entitled to only twelve (12) hours in the payroll calendar year in which they were hired.

ARTICLE 18 SICK LEAVE

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

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

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments; or for the care related to the illness of the employee's child, mother, father, spouse, or domestic partner registered with the Department of Human Resources.

Up to a total of 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.

The provisions of this section related to the use of sick leave for the care related to the illness or injury of the employee's family members as defined above shall expire at the end of the term of this Agreement. In the negotiations for a successor Agreement, the parties shall review and evaluate the appropriateness of this benefit.

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 Department Director or his/her 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, and has exhausted all

other available leave 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 26, 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 a 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 supervisor or Department Director, or designee of his or her intent to take sick leave, and of the reasons prior to the commencement of the sick leave. If the employee fails to notify their immediate supervisor, Department Director, or designee at least one half-hour prior to the commencement of the sick leave, it can result in disciplinary action unless the failure is due to extenuating circumstances extenuating beyond the control of the employee.
- The City Manager, or designee, however may waive the requirement of such notice upon presentation of a reasonable excuse by such employee. Departments may require an earlier call-in (prior to the start of the shift) where work crew situation or other Departmental needs require. Departments that require early call-in will have a phone recorder or a person assigned to accept calls with 24-hour coverage.
- 18.1.5 Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absence.
- 18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for eighteen (18) consecutive or cumulative months in any period of twenty-four (24) consecutive months shall be considered to have voluntarily resigned. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months. Any employee who is unable to return to work at the expiration of either of these periods of time shall be considered to have voluntarily separated from City service. The City shall give the employee reasonable notice of its intent to apply this rule prior to processing a termination. Such resignation shall be considered a resignation in good standing and the

employee shall therefore be eligible to apply for re-employment pursuant to San Jose Municipal Code Section 3.04.1530. However, an employee who has reached this limit may apply for a leave of absence without pay pursuant to Article 13.

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

18.3 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

18.3.1 Federated Retirement Plan

The employee is:

18.3.1.1 a member of the Federated Retirement Plan, and

18.3.1.2 retired under the provisions cited in the plan, and

18.3.1.3 credited with at least fifteen (15) years of service in this retirement plan, or

18.3.1.4 credited with at least ten (10) years of service prior to a disability retirement.

18.3.2 Terminated Employee with Vesting Rights

The employee has:

18.3.2.1 terminated his/her service with the City, and

18.3.2.2 retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and

18.3.2.3 following such termination, qualifies for retirement and retires under the provisions cited in the code, and

18.3.2.4 has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.3.3 Death During Service

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

18.3.4 Death of Terminated Employee

The estate of any full-time employee who:

18.3.4.1 had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and

18.3.4.2 dies prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code, and

18.3.4.3 has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

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

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

- 18.5 Payout shall be determined as follows: If a full-time employee at the time of his/her 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:

Less than 400 hours:	Total hours accumulated x 50% of final hourly rate.
or 400 but less than 800 hours:	Total hours accumulated x 60% of final hourly rate.
or 800 - 1200 hours:	Total hours accumulated x 75% of final hourly rate.

- 18.6 Use of previously accumulated sick leave hours:

For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of his/her retirement or death, unused sick leave from prior periods of employment before June 22, 2013, with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement

Disability Leave Supplement (DLS) was the benefit provided pursuant to this Article, which when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary. Effective July 7, 2013, employees were no longer eligible to receive DLS.

19.2 Termination of Disability Leave

An employee who is unable to return to full time regular duty following the expiration of any and all leave (and the integration of Sick Leave as provided in Article 18), including the integration of accrued vacation, compensatory time off, and sick leave as provided in Article 19.3 and with Workers' Compensation may be separated from City service.

19.3 Integration

The integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have 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, 2018, is a member in good standing of the 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 Organization as a condition of retaining membership.
- 20.2 Any employee who, on July 1, 2018, is not a member of the Organization, nor any person who becomes an employee after July 1, 2018, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.
- 20.3 During the period June 1, 2021, through and including June 30, 2021, 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 Article 7.
- 20.4 The 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 AUTHORIZED REPRESENTATIVES

- 21.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:
- 21.1.1 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.
- 21.1.2 The employee Organization's principal authorized agent shall be the Business Manager, or his/her duly authorized representative.

ARTICLE 22 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 23 BEREAVEMENT LEAVE

23.1 Each full-time employee shall be granted Bereavement Leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an eligible person. Under extreme circumstances, the 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) Parent/Step-parent
- b) Spouse
- c) Child/Step-child
- d) Brother/Sister/Step-brother/Step-sister/Half-brother/Half-sister
- e) Grandparent/Step-grandparent
- f) Great grandparent/Step-great grandparent
- g) Grandchild
- h) Brother/Sister-in law/Son/Daughter-in-law

23.1.1 A domestic partner, as referenced in Section 23.1 must be the domestic partner registered with the Department of Human Resources.

23.2 Anything hereinabove to the contrary notwithstanding, no such 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 24 RETIREMENT

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

24.1.1 Administrative cost of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. Costs to the fund for staff salaries and indirect labor costs shall not exceed 0.17% of assets in the fund per year.

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

ARTICLE 25 RETIREE HEALTHCARE FUNDING AND BENEFITS

25.1 The City and the Union have agreed to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition began on June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio

currently provided under Section 3.28.38 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.

- 25.2 The City and the Union 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 Union will support such amendments.
- 25.3 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 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 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 3.28.38 of the San Jose Municipal Code.
- 25.4 The City has established a qualified 115 trust ("Trust"). Employee contributions will begin going into the Trust in time to avoid any potential of reaching the IRS limits on the existing medical benefits account or upon receipt of a ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.
- 25.5 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.
- 25.6 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.
- 25.7 Employees hired into full-time benefited positions on or after the first payperiod following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. The City will pay the unfunded liability contribution that these employees and the City would have otherwise paid had they gone into the retiree healthcare defined benefit program.
- 25.8 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 26 TIME DONATION PROGRAMS

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

ARTICLE 27 PROBATIONARY PERIOD

- 27.1 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.
- 27.2 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. The employee will be provided with a copy of their performance appraisal and a copy of the memo from the Department to Human Resources which outlines the reasons for the request for extension.

ARTICLE 28 DISCIPLINARY ACTION

- 28.1 The City of San Jose discipline policy is described in City Policy Manual, Section 2.1.3. 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, demotion and dismissal.
- 28.2 Step Reduction: As an alternative to suspension, demotion or dismissal, the appointing authority may reduce an employee's salary step up to no more than two steps in a case involving a loss of driving privileges or attendance problems (excluding authorized paid sick leave). 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; e.g., reinstatement of city driving privileges. 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. Reduction of salary step may continue to be used for voluntary settlement agreements.
- 28.3 No provisions of this Article shall be subject to the grievance procedure of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City Policy Manual, Section 2.1.3 and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE 29 ALTERNATIVE WORK SCHEDULE

- 29.1 Employees may be eligible for an Alternative Work Schedule, subject to the provisions and conditions in the City of San Jose Alternative Work Schedules Policy. Neither the failure of the Department to enter 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 30 NON-DISCRIMINATION

The City and the union agree that they, and each of them, shall not discriminate against any employees because of membership or lack of membership in the union or because of any authorized activity on behalf of the union. Further, any claims of discrimination made by a represented employee as per this Article 30, may be appealed through the grievance procedure outlined in this agreement.

ARTICLE 31 EMPLOYEE ASSISTANCE REFERRAL

- 31.1 Performance problems are sometimes related to personal or work-related problems, which may be improved through the Employee Assistance Program (EAP). There are four ways an employee may be referred to the EAP. The employee may self refer (self referral), a supervisor may informally remind the employee of the EAP services (informal supervisory referral), a supervisor may formally discuss the issue with the employee and a management consultant at the EAP (formal supervisory referral), or the supervisor may require the employee to attend one initial screening session with the EAP (mandatory referral).
- 31.2 If a supervisor believes that an employee's work performance is impaired and can be improved through the EAP and has declined the formal supervisory referral, he or she, with Department Director approval, may require the employee to attend one initial screening session with the EAP.
- 31.3 The employee shall receive paid release time to attend the initial appointment and must sign a Release of Information form that authorizes the EAP provider to release information limited to dates of service and attendance. Failure to attend or to provide proof of such attendance through the Release of Information form may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions, unless the employee voluntarily signs a release of information form that authorizes release of information beyond dates of service and attendance. The employee's decision to attend or not attend follow-up sessions shall be voluntary. Follow-up sessions shall be on the employee's own time. This may include the approved use of sick leave, vacation, comp-time, or personal leave.
- 31.4 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

ARTICLE 32 ADVANCE NOTICE

- 32.1 The City may adopt, change or modify work rules. Whenever the City changes work rules or issues new work rules, the Union will be given at least five (5) days prior notice, absent emergency, before the effective date, in order that the Union may discuss said rules with the City before they become effective if the Union so requests.
- 32.1.1 When a Department makes a policy change that impacts wages, hours, or terms and conditions of employment, that policy change should first be sent to the Office of Employee Relations for review prior to implementation. Once reviewed by Employee Relations, pursuant to Article 31.1, said changes should be provided to the Union for review.

ARTICLE 33 EMPLOYEE COMMUTE BENEFIT PROGRAM

The Employee Commute Benefit Program shall be as follows:

- 33.1 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.

- 33.2 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 33.1.
- 33.3 Pursuant to the Employee Commute Benefit Program, eligible employees shall be allowed to use pre-tax dollars ("Pre-Tax Payroll Deduction Program") to pay for transit service beyond those provided by VTA. The administrative fees of the Pre-Tax Payroll Deduction Program will be paid for by the City. The Pre-Tax Payroll Deduction Program shall enable employees to use pre-tax dollars to pay for non-VTA transit services, which may include, but are not limited to, Caltrain, the Hwy 17 Express Bus, and BART.

ARTICLE 34 UNION RELEASE TIME

- 34.1 City Paid Union Release Time (URT). The designated bargaining unit representative(s) shall use the City Paid Union Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. The designated bargaining unit representative(s) shall not receive compensation for meetings that may occur outside their regular work hours, inclusive of any unpaid lunch period. Upon request by the City, the bargaining unit representative(s) shall provide the City with a general explanation of the business conducted when the URT code is used.

THIS AGREEMENT executed on the 17th day of May, 2018, between the City of San Jose and the International Brotherhood of Electrical Workers, Local No. 332, in WITNESS thereof, the appropriate Representatives of the parties have affixed their signature thereto.

This Memorandum of Agreement was approved by the City Council of the City of San Jose on June 5, 2018, and ratified by the International Brotherhood of Electrical Workers, Local No. 332, on April 19, 2018.

FOR THE CITY:



David Sykes
City Manager



Jennifer Schembri
Director of Employee Relations



Marido Mercado
Assistant to the City Manager
Office of Employee Relations



Elsa Cordova
Senior Executive Analyst
Office of Employee Relations



Sarah Steele
Executive Analyst
Office of Employee Relations

FOR THE UNION:



Daniel Romero
Business Representative
IBEW, Local 332



Frank Crusco
Chief Steward
IBEW, Local 332



Long Vu
Team Member
IBEW, Local 332



Himant Kumar
Team Member
IBEW, Local 332

EXHIBIT "I"
Salary Schedule

Salary Ranges Effective June 17, 2018

Job Code	Job Title	FLSA	Top step	Min/Hour	Max/Hour	Min/Annual	Max/Annual
8526	Communications Installer	N	9	\$30.25	\$36.75	\$62,920.00	\$76,440.00
8527	Communications Instlr PT	N	9	\$30.25	\$36.75	\$62,920.00	\$76,440.00
8525	Communications Technician	N	9	\$38.58	\$46.95	\$80,246.40	\$97,656.00
3151	Electrician I	N	9	\$38.58	\$46.95	\$80,246.40	\$97,656.00
3153	Electrician II	N	9	\$40.53	\$49.31	\$84,302.40	\$102,564.80
3155	Electrician Supervisor	N	9	\$49.29	\$59.95	\$102,523.20	\$124,696.00
3663	Indstrl Electrician Supervisor	N	9	\$51.72	\$63.01	\$107,577.60	\$131,060.80
3661	Industrial Electrician	N	9	\$42.45	\$51.72	\$88,296.00	\$107,577.60
3762	Instrument Control Supvr I	N	9	\$46.95	\$57.04	\$97,656.00	\$118,643.20
3766	Instrument Control Supvr II	N	9	\$49.29	\$59.95	\$102,523.20	\$124,696.00
3761	Instrument Control Tech I	N	9	\$38.58	\$46.95	\$80,246.40	\$97,656.00
3764	Instrument Control Tech II	N	9	\$40.53	\$49.31	\$84,302.40	\$102,564.80
3763	Instrument Control Tech III	N	9	\$42.56	\$51.73	\$88,524.80	\$107,598.40
3765	Instrument Control Tech IV	N	9	\$44.71	\$54.34	\$92,996.80	\$113,027.20
8524	Senr Communic Technician	N	9	\$42.56	\$51.73	\$88,524.80	\$107,598.40
3154	Senr Electrician	N	9	\$44.71	\$54.34	\$92,996.80	\$113,027.20
8529	Senr Electronic Syst Tech	N	9	\$42.56	\$51.73	\$88,524.80	\$107,598.40
3662	Senr Industrial Electrician	N	9	\$46.87	\$57.07	\$97,489.60	\$118,705.60

Salary Ranges Effective June 30, 2019

Job Code	Job Title	FLSA	Top step	Min/Hour	Max/Hour	Min/Annual	Max/Annual
8526	Communications Installer	N	9	\$31.16	\$37.85	\$64,812.80	\$78,728.00
8527	Communications Instlr PT	N	9	\$31.16	\$37.85	\$64,812.80	\$78,728.00
8525	Communications Technician	N	9	\$39.74	\$48.36	\$82,659.20	\$100,588.80
3151	Electrician I	N	9	\$39.74	\$48.36	\$82,659.20	\$100,588.80
3153	Electrician II	N	9	\$41.75	\$50.79	\$86,840.00	\$105,643.20
3155	Electrician Supervisor	N	9	\$50.77	\$61.75	\$105,601.60	\$128,440.00
3663	Indstrl Electrician Supervisor	N	9	\$53.27	\$64.90	\$110,801.60	\$134,992.00
3661	Industrial Electrician	N	9	\$43.72	\$53.27	\$90,937.60	\$110,801.60
3762	Instrument Control Supvr I	N	9	\$48.36	\$58.75	\$100,588.80	\$122,200.00
3766	Instrument Control Supvr II	N	9	\$50.77	\$61.75	\$105,601.60	\$128,440.00
3761	Instrument Control Tech I	N	9	\$39.74	\$48.36	\$82,659.20	\$100,588.80
3764	Instrument Control Tech II	N	9	\$41.75	\$50.79	\$86,840.00	\$105,643.20
3763	Instrument Control Tech III	N	9	\$43.84	\$53.28	\$91,187.20	\$110,822.40
3765	Instrument Control Tech IV	N	9	\$46.05	\$55.97	\$95,784.00	\$116,417.60
8524	Senr Communic Technician	N	9	\$43.84	\$53.28	\$91,187.20	\$110,822.40
3154	Senr Electrician	N	9	\$46.05	\$55.97	\$95,784.00	\$116,417.60
8529	Senr Electronic Syst Tech	N	9	\$43.84	\$53.28	\$91,187.20	\$110,822.40
3662	Senr Industrial Electrician	N	9	\$48.28	\$58.78	\$100,422.40	\$122,262.40

Salary Ranges Effective June 28, 2020

Job Code	Job Title	FLSA	Top step	Min/Hour	Max/Hour	Min/Annual	Max/Annual
8526	Communications Installer	N	9	\$32.09	\$38.99	\$66,747.20	\$81,099.20
8527	Communications Instlr PT	N	9	\$32.09	\$38.99	\$66,747.20	\$81,099.20
8525	Communications Technician	N	9	\$40.93	\$49.81	\$85,134.40	\$103,604.80
3151	Electrician I	N	9	\$40.93	\$49.81	\$85,134.40	\$103,604.80
3153	Electrician II	N	9	\$43.00	\$52.31	\$89,440.00	\$108,804.80
3155	Electrician Supervisor	N	9	\$52.29	\$63.60	\$108,763.20	\$132,288.00
3663	Indstrl Electrician Supervisor	N	9	\$54.87	\$66.85	\$114,129.60	\$139,048.00
3661	Industrial Electrician	N	9	\$45.03	\$54.87	\$93,662.40	\$114,129.60
3762	Instrument Control Supvr I	N	9	\$49.81	\$60.51	\$103,604.80	\$125,860.80
3766	Instrument Control Supvr II	N	9	\$52.29	\$63.60	\$108,763.20	\$132,288.00
3761	Instrument Control Tech I	N	9	\$40.93	\$49.81	\$85,134.40	\$103,604.80
3764	Instrument Control Tech II	N	9	\$43.00	\$52.31	\$89,440.00	\$108,804.80
3763	Instrument Control Tech III	N	9	\$45.16	\$54.88	\$93,932.80	\$114,150.40
3765	Instrument Control Tech IV	N	9	\$47.43	\$57.65	\$98,654.40	\$119,912.00
8524	Senr Communic Technician	N	9	\$45.16	\$54.88	\$93,932.80	\$114,150.40
3154	Senr Electrician	N	9	\$47.43	\$57.65	\$98,654.40	\$119,912.00
8529	Senr Electronic Syst Tech	N	9	\$45.16	\$54.88	\$93,932.80	\$114,150.40
3662	Senr Industrial Electrician	N	9	\$49.73	\$60.54	\$103,438.40	\$125,923.20