

Memorandum of Agreement

City of San Jose

and

**Association of
Building, Mechanical and Electrical Inspectors
(ABMEI)**



July 1, 2023 – June 30, 2026

**Association of Building, Mechanical and Electrical Inspectors
Memorandum of Agreement**

July 1, 2023 through June 30, 2026

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

- [HTTPS://WWW.SANJOSECA.GOV/YOUR-GOVERNMENT/DEPARTMENTS-OFFICES/HUMAN-RESOURCES](https://www.sanjoseca.gov/your-government/departments-offices/human-resources)

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, this 24th day of May 2023 by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the Association of Building, Mechanical and Electrical Inspectors, hereinafter referred to as the "Employee Organization" or "Organization."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective July 1, 2023, except where otherwise provided, and shall remain in effect through June 30, 2026. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

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

ARTICLE 2 RECOGNITION

Pursuant to Resolution #39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Association of Building, Mechanical and Electrical Inspectors, hereinafter referred to as the Employee Organization, is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions there from shall constitute an appropriate unit.

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 Association of Building, Mechanical and Electrical Inspectors.

ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution No. 39367 of the Council of the City of San Jose and in Part 2 - Definitions of Chapter 3.04 of Title III of the San Jose Municipal Code unless it is apparent from the context that a different meaning is intended.

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Salary Ranges

5.1.1 Effective July 1, 2018, all employees in classifications assigned to ABMEI (Union code 03/031) shall receive an approximate 5% ongoing non-pensionable compensation increase.

5.1.1.1 Fiscal Year 2023-2024

In recognition of work performed during the COVID-19 pandemic, a \$1,000 one-time non-pensionable lump sum payment shall be made to full-time employees holding positions in classifications assigned to ABMEI effective June 25, 2023. To receive the one-time, non-pensionable lump sum payment, a full-time employee must have been employed in an ABMEI represented position on May 11, 2021, and still be employed in an ABMEI position effective June 25, 2023.

Effective June 25, 2023, all salary ranges for employees holding positions in classifications assigned to ABMEI shall be increased by approximately 5.00%. Effective September 17, 2023, all salary ranges for employees holding positions in classifications assigned to ABMEI shall be increased by 1.00% for a total pensionable general wage increase of 6.00%. This 1.00% shall be based on the rate of pay as of June 24, 2023.

In addition, effective June 25, 2023, all salary ranges for employees holding positions in classifications assigned to ABMEI shall receive an additional 1.50% in recognition of the fact that ABMEI received a 3.00% general wage increase in FY 2022-2023 whereas most other City employees received a 4.5% general wage increase.

5.1.1.2 Fiscal Year 2024-2025

Effective the first pay period of Fiscal Year 2024-2025-, all salary ranges for employees holding positions in classifications assigned to ABMEI shall be increased by approximately 4.00%.

Effective the first full pay period in January 2025, all salary ranges for employees holding positions in classifications assigned to ABMEI shall be increased by approximately 1.00%.

5.1.1.4 Fiscal Year 2025-2026

Effective the first pay period of Fiscal Year 2025-2026, all salary ranges for employees holding positions in classifications assigned to ABMEI shall be increased by approximately 3.50%.

If the revised 5-Year Forecast included as part of the 2025-2026 Proposed Operating Budget includes a \$10 million dollar surplus or more in Fiscal Year 2025-2026, the general wage increase effective the first full pay period of Fiscal Year 2025-2026, for employees holding positions in classifications assigned to ABMEI shall be 4.00%.

5.1.2 The salary steps for all classifications represented by ABMEI shall be approximately 2.5%.

5.2 Working in a Higher Classification

5.2.1 Upon specific assignment by the Department Director, or designee, an employee may be required to perform the duties of a higher classification. Such assignments may be made to existing authorized positions, which are not actively occupied due to the temporary absence of the regularly appointed employee. Assignments to vacant positions shall be made in accordance with the rules pertaining to Temporary or Provisional appointments, or in accordance with section 5.2.2 below.

5.2.2 As an alternative to making an appointment to a vacant position, a department, may, upon City Manager or designee approval, assign an employee to work in a higher classification for a period of time not to exceed six months. At the expiration of the assignment (not to exceed six months), the assigned employee shall return to their regular assignment. The department may then request authorization to fill the position or return it to vacant status.

5.2.3 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher classification, which

is at least five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class. Notwithstanding any other provision of this section, in no event shall an employee receive an amount in excess of the top of the salary range of the higher classification. The employee shall not receive any compensation, however, unless the assignment is for two (2) consecutive workdays or longer. The employee shall be compensated at the appropriate rate commencing with the first workday of the assignment provided the assignment is made for the applicable length of time.

5.3 Health Insurance

5.3.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents. All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren), and Family).

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

5.3.2 **Medical Insurance Provider with the Second Highest Overall Employee Enrollment.** The City pays ninety percent (90%) of the cost of the lowest priced Non-Deductible HMO Co-Pay Plan of the medical insurance provider with the second highest overall employee enrollment for the employee or the employee and dependent coverage, and the employee pays ten percent (10%) of the full premium cost of the lowest priced Non-Deductible Co-Pay Plan of the medical insurance provider with the second highest overall employee enrollment.

5.3.3 Any deductible plans offered by the medical insurance provider with the second highest overall employee enrollment and whose cost is below ninety percent (90%) of the full premium cost of the lowest priced Non-Deductible HMO Co-Pay Plan will be offered to full-time employees at no cost.

5.3.4 **Medical Insurance Provider with the Highest Overall Employee Enrollment.** The City will pay eighty-five (85%) of the full premium cost of the lowest priced Non-Deductible HMO Co-Pay Plan of the medical insurance provider with the highest overall employee enrollment for the employee or the employee and dependent coverage, and the employee pays fifteen percent (15%) of the full premium cost of the lowest priced Non-Deductible Co-Pay Plan of the medical insurance provider with the highest overall employee enrollment.

5.3.5 If the employee selects a plan other than the lowest priced Non-Deductible HMO Co-Pay Plan, the employee pays the difference between the total cost

of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO Co-Pay Plan.

- 5.3.6 **Default Healthcare Plan.** New full-time employees and current employees not previously eligible to receive benefits who are hired into a full-time benefits eligible position and who do not sign up for a healthcare plan within thirty (30) calendar days from their hire date, will be automatically enrolled in the lowest cost HMO Deductible plan offered by the medical insurance provider with the second highest overall employee enrollment at the time the employee is automatically enrolled.

5.4 Dental Insurance

- 5.4.1 The City will offer dental coverage for eligible full-time employees and their dependents. As of the date of this Agreement, the plans include a PPO plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook available on the City's website and in pamphlets available 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.

- 5.4.2 Each eligible full-time employee and dependents shall receive Orthodontia coverage in the Delta Dental Plans; the PPO plan must be medically necessary and has a lifetime maximum amount of \$2,000, the DHMO plan will include a copayment of \$1,000, and orthodontia coverage (both medically and non-medically necessary) is limited to once per eligible member per lifetime.
- 5.4.3 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending sections 3.24, Part 24, and 3.28, Part 17, Title 3 of the San Jose Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.
- 5.4.4 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.

5.5 Payment-in-Lieu of Health and Dental Insurance

- 5.5.1 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 as soon as practicable in Fiscal Year 2023-2024, the payment in lieu amount for employee only will be adjusted as provided for in section 5.5.2.

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

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

5.5.3 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.

5.5.4 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, a new employee must attest that the employee and all covered dependents have or will have minimum essential coverage under an alternate group medical/dental plan and an employee who has a life qualifying event must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.5.5 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period, or within 30 days of a qualifying event (defined in the Human Resources Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.5.6 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week of less than thirty-

five (35) regular 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.

5.5.7 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.

5.5.7.1 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 carriers' enrollment procedures.

5.5.7.2 Dental Insurance. To enroll in a City dental insurance plan following the 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 Call Back Pay

An employee who is called back to work after the employee has worked their scheduled shift and has departed from their place of employment shall be credited with overtime for the time worked, or for two (2) hours at the appropriate rate, whichever is greater.

5.7 Jury Duty

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

5.7.2 Employees assigned to a day shift:

5.7.2.1 In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives their full

day's pay, and shall pay to the City the amount they receive from the court for the jury duty, excluding mileage.

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

5.7.2.3 In those cases in which the employee is not released by the court until after 1:00 p.m., the employee need not return to work. The employee receives the full day's pay, and shall pay to the City the amount they receive from the court for the jury duty, excluding mileage.

5.8 Witness Leave

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

5.8.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be compensated at the appropriate rate for the time spent by him/her in court, or for two (2) hours, whichever is greater, less any and all witness fees which the employee may receive. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City.

5.8.3 Upon service of subpoena, an employee shall immediately advise their Department Director, designee or supervisor thereof, and of the time when the employee is required to appear in Court in response thereto.

5.9 Educational and Professional Incentives

5.9.1 Educational and Professional Program: The City will reimburse each employee one-hundred percent (100%) of expenses incurred, up to \$1000.00 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 code books, code commentary, on-line subscription services, code related study guides, professional reference books, and

professional reference standards, non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service, as approved by the Department Director or designee. City Policy Manual Section 4.3.1, Education Reimbursement, outlines additional details of the program.

5.9.1.1 Permanent employees serving a promotional probationary period shall be eligible for the Educational and Professional Program.

5.9.2 The City will pay one-hundred percent (100%) of the examination and renewal fees for the maintenance of certifications required for employees in the certified and uncertified Combination Building Inspector class and certified and uncertified Supervising Building Inspector classes issued by the International Code Council (ICC), the International Association of Electrical Inspectors (IAEI) or the International Association of Plumbing and Mechanical Officials (IAPMO) for the performance of their duties. The City will provide employees with the necessary study guides and code books required to maintain these certifications. The study guides and code books are property of the City.

5.10 Use of Private Automobile - Mileage Reimbursement

Each employee of the City authorized by the City Manager or designee to use the employee's private automobile in the performance of the employee's duties shall be entitled to receive and shall be paid as a travel allowance for such use of the employees private automobile a "mileage reimbursement rate" consistent with the City's rate, as specified in the City Policy Manual.

5.11 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.

5.12 Bilingual Pay

Each full time employee who meets the eligibility requirements set forth herein shall be compensated as described below for each pay period actually worked.

5.12.1 The employee is or was selectively certified for a position which has been approved by the Director of Human Resources or designee for selective certification based on bilingual ability and is currently assigned to such position, or

- 5.12.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of a non-English language on a regular basis.
- 5.12.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the organization.

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

- 5.12.4 Each employee who meets the above eligibility requirements shall be compensated for performing oral or written communication or sign language duties at the rate of sixty dollars (\$60) per biweekly pay period for each pay period actually worked.
- 5.12.5 If an eligible employee is on a paid or unpaid leave of absence, for a period of one (1) full pay period or more, the appropriate reduction in bilingual pay shall be made.
- 5.12.6 If an employee who receives bilingual pay refuses to provide interpretation or translation services for which they are certified, the employee shall no longer be eligible to receive bilingual pay.

5.13 Scheduled Off-Hours Inspections

An employee who is scheduled to perform one or more inspection(s) outside of, and not contiguous with, his/her regularly scheduled shift, shall be compensated for performing such inspection(s) at the rate of four (4) hours or for the time actually worked, to the nearest half-hour, whichever is greater. Such compensation shall be at the appropriate rate.

5.14 Protective Clothing and Equipment

- 5.14.1 The City shall furnish to each new full-time employee required safety shoes, coveralls, and other protective equipment in accordance with applicable State and Federal laws and regulations as required within a reasonable time of employment. In addition, rain cover shall be available for use by employees required to work outside in inclement weather. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 5.14.2 The City shall pay a cash protective clothing and equipment allowance to each eligible employee in the annual amount of \$400. Eligible employees will begin receiving the annual allowance in the calendar year following initial receipt of the protective clothing and equipment. The annual

allowance will be paid as soon as practical after January 1 of each calendar year. Employees must be employed in an ABMEI represented position at the time of payment to receive the allowance.

5.14.3 The employee shall be responsible for the continued upkeep, cleaning, and maintenance of the initially issued protective clothing, including safety shoes and coveralls, from the cash allowance. The City will replace the protective equipment required by applicable State and Federal laws and regulations as needed except for safety shoes and coveralls.

5.15 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.

5.16 Premium Pay

Employees shall receive a professional achievement incentive of 1.5% (paid biweekly) in addition to their base salary as follows. In order to receive the professional achievement incentive, the employee must hold commercial certifications in all four trade areas (Building, Plumbing, Mechanical and Electrical) or they must hold a Commercial Combination Inspector certificate which represents commercial certifications in Building, Plumbing, Mechanical and Electrical. This non-pensionable premium pay becomes effective the first full pay period after the date of an approved application is received by the Payroll Department.

Effective June 25, 2023, employees are also eligible to receive an additional professional achievement incentive of 1.50% (paid biweekly) in addition to their base salary for maintaining a CASp certification. This non-pensionable premium pay becomes effective the full first pay period after the date an approved application is received by the Payroll Department.

5.17 Shift Differential

5.17.1 A swing shift differential of two dollars (\$2.00) per hour shall be paid to employees in the Public Works Department for each regularly scheduled hour worked after 2:00 p.m. and prior to 11:59 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 2:00 p.m. and prior to 11:59 p.m.

- 5.17.2 A night shift differential of two dollars and thirty-five cents (\$2.35) per hour shall be paid to employees in the Public Works Department for each regularly scheduled hour worked after 12:00 a.m. and prior to 5:59 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 12:00 a.m. and before 5:59 a.m.
- 5.17.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.
- 5.17.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.
- 5.17.5 Except as otherwise required by State or Federal law, shift differential shall not be included as regular compensation in computing other benefits.

5.18 Overpayments of Compensation

When the City determines an overpayment has been made to an employee, it shall notify the employee of the overpayment and afford the employee an opportunity to respond prior to commencing recoupment actions. The City will endeavor to reach mutual agreement with the employee regarding repayment terms, which may be in lump sum cash payment(s) or installment(s) through payroll deduction(s). Absent mutual agreement on a method of reimbursement within 30 days, the City shall proceed with recoupment via Payroll deductions over a number of pay periods equivalent to the term of overpayment, unless the maximum deduction per pay period is insufficient to repay the balance of the overpayment. In this case, the payments shall continue for as many pay periods is necessary to repay the balance of the overpayment. In no event shall amounts deducted from payment of salary or wages exceed 15% of the employee's net disposable earnings.

5.18.1 An employee who separates from City employment prior to full repayment of the amount owed to the City shall have any money owed to the City withheld from their final paycheck(s). If the amount of money owed upon separation is insufficient to provide full reimbursement to the City, the City shall

have the right to exercise any and all other legal means to recover the additional amount owed.

ARTICLE 6 HOURS OF WORK AND OVERTIME

- 6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 6.3 The normal work schedule 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.
 - 6.3.1 With the approval of the Department Director or designee, employees holding positions in classifications assigned to ABMEI (Union Code 03/031) Unit Three (3) may be scheduled for a thirty (30) minute or forty-five (45) minute lunch period in lieu of a one (1) hour lunch period where such schedule would not adversely affect the Department's or Section's hours of service to the public.
- 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 work weeks except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 6.5 The Department Director or designee, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and work week for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.6 An employee authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her work week requirement.
 - 6.6.1 Notwithstanding 6.6 above, any employee who works in excess of twelve consecutive hours shall be compensated at the rate of two (2) times the employee's hourly rate for all hours worked in excess of twelve (12) consecutive hours.
 - 6.6.2 For overtime work, volunteers will be asked for first, whenever possible.

- 6.7 An employee assigned to work overtime may elect to either be paid for such overtime worked or be credited with compensatory time, providing that the employee makes such election during the pay period in which the overtime is worked, and provided, further, that in the event the employee requests payment for such overtime, the Department's budget can accommodate such payment. Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off unless emergency circumstances necessitate cancellation of the time off. In such event, the employee will remain credited with the time canceled.
- 6.7.1 Notwithstanding any other provision of Section 6.7 to the contrary, the Department Director or designee may announce the intent of the department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire department or to a specified section(s) of a department. The announcement will also specify a date by which each affected employee must elect to either:
- 6.7.1.1 be paid for all accrued, unused compensatory time, OR
 - 6.7.1.2 be paid for all but 24-hours of such accrued, unused compensatory time, OR
 - 6.7.1.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.7.
- 6.8 Time spent on paid sick leave, holiday leave, vacation leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.
- 6.9 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.
- 6.10 A fifteen (15) minute rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

ARTICLE 7 DUES

- 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 Organization, dues uniformly required as a condition of membership, pursuant to the Employee Organization's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.

- 7.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee from time to time by the designated Representative of the Employee Organization as regular monthly dues.
- 7.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Employee Organization the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Employee Organization not later than twenty-one (21) days following the pay period in which the deductions were made.
- 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 Employee Organization will refund to the employee any union dues erroneously withheld from an employee's wages by the City and paid to the Employee Organization. In the event the Employee Organization fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Employee Organization.
- 7.7 The Employee Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.

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 re-assign the work force hire, promote, demote discharge or discipline for cause transfer or reclassify employees provide merit increases assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.

- 8.2 The City has the sole and absolute right to determine the nature and type of, assign, re-assign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the Association of Building, Mechanical and Electrical Inspectors representing such employee.

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 Memoranda of Understanding, 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.
- 9.5 The City agrees to meet and confer with the Union 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.
- 9.6 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and ABMEI shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and ABMEI shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse procedures shall apply.

9.7 Healthcare Cost Mitigation

9.7.1 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party, but no earlier than January 1, 2014. This may include but is not limited to alternatives to reduce the unfunded liability and options for current employees that comply with IRS regulations.

9.7.2 Negotiations between the City and Employee Organization shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

ARTICLE 10 CONCERTED ACTIVITY

It is understood and agreed that:

10.1 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 as 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 possible disciplinary action up to and including discharge.

10.2 If the Employee Organization, its officers or its authorized representatives violate provision (10.1) above or tolerate the violation of provision (10.1) 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) above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Organization shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Employee Organization and the Municipal Employee Relations Officer or designee 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 or designee shall not be subject to review under the provisions of Article 12, entitled Grievance Procedure.

ARTICLE 11 SAFETY

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Association agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes that their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try and resolve it at that level. The employee may at any time request that a union representative be present for any part of the process.
- 11.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA regulations. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway. If no other duties are available, the employee may be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform.
- 11.4 No provisions of this Article shall be subject to the grievance procedures of this Agreement. If the Union is not satisfied with the City's determination, the Union can request to meet with the Office of Employee Relations to discuss the City's determination.
- 11.5 As used herein, the term "City Safety Officer" shall include any person designated to act as such.

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 employee(s).

12.2 Grievances involving Resolution #39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer or designee 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 Employee Organization 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 is 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 their immediate supervisor, the employee 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 designee, 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, and 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 designee may arrange a meeting with the employee, the appropriate employee organization representative and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director or designee shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

12.4.4 If the employee is not satisfied with the decision, the employee 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 ten (10) 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 employee organization representative, and the Department Director or designee to discuss the matter. A written decision shall be given the employee or the appropriate employee organization representative within five (5) working days following the meeting.
- 12.5.3 If the employee is not satisfied with the decision of the Municipal Employee Relations Officer, the employee or the appropriate employee organization representative may appeal the grievance to Step IV.

12.6 STEP IV - ARBITRATION

- 12.6.1 If the grievance has been properly processed through the previous steps of the procedure and remains unresolved, the employee or the appropriate employee organization representative may appeal the grievance to arbitration. The employee or the appropriate employee organization representative shall notify the Municipal Employee Relations Officer or designee, in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at 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 or designee with the employee and/or the appropriate employee organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue or issues, each party will prepare its statement of the issue or issues and 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 or designee and to the employee or appropriate representative of the employee organization.
- 12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 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 the grievances may be processed during normally scheduled working hours, the employee organization agrees that the time spent by its designated representatives shall be kept to a minimum and that no employee organization representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The employee organization also agrees that it will not process grievances during 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 employee organization representative may appeal the grievance to the next higher step within the time limits provided.
- 12.7.3 The employee organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 12.7.4 Working days as used in this Article shall be defined as the regularly

scheduled working days of the employee, or appropriate employee organization representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

- 12.7.5 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.

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 his/her designated representative, may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may be extended, not to exceed an additional 6 months, by written request of the employee subject to approval of the City Manager or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered a voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to 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 their return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact their

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

- 13.5 For the 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 their Department Director or designee for two (2) consecutive work shifts shall be considered a voluntary resignation unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 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 by the City to be the result of extenuating circumstances beyond their control shall be reinstated.
- 13.8 City-Paid Parental Leave: Full-time employees shall be eligible for City-paid parental leave and are subject to the terms and conditions of the City of San Jose's Paid Parental Leave Policy.

Effective June 25, 2023, for eligible births, adoptions, or foster care placements, full-time employees will receive a maximum total of one-hundred sixty (160) hours of continuous paid time off and shall be eligible to use up to a maximum total of one-hundred and twenty (120) hours of their available sick leave for City-Paid Parental Leave reasons.

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 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.
- 14.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive

concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

14.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:

14.3.1 Accept a position in a lateral or lower class in which he/she has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided 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 Director of Human Resources or designee. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director of Human Resources regarding necessary education, experience, and training shall be subject to the grievance procedure, including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.

14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.

14.4 As used in this Article, the following words and phrases shall be defined as follows:

14.4.1 Except as otherwise provided in part 14.3 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 Part 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 the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.6.3 Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have their 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 their name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director of Human Resources, be returned to the Reinstatement Eligible List.
- 14.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 15 BULLETIN BOARDS

- 15.1 Recognized employee organizations may use designated portions of City bulletin boards in departments, which 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 employee organization notices and announcements listed below may be posted on the bulletin boards:
- 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the employee organization and the Municipal Employee Relations Officer or designee.
- 15.3 All material shall identify the organization responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee who shall have the sole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer or designee shall notify the employee organization of any material ordered removed. The employee organization shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 15.6 Failure of the employee organization to abide by the provisions of this Article shall result in the forfeiture of the employee organization's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

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

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

Effective January 1, 2024, Lunar New Year shall be observed in accordance with the State of California's holiday schedule and New Year's Eve Day shall no longer be a City-observed holiday.

- 16.2 Eligible full-time employees shall also be entitled to paid holiday leave 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.
- 16.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the proceeding Friday.
- 16.4 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays provided, however, that subject to regulation and control by the City Manager, the director or designee 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 their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary that he would be entitled to for that day at the employee's regular rate of pay, and in addition thereto, the employee shall receive compensatory time off duty equal to one and one-half (1-1/2) times the number of hours which the employee works on said holiday.
 - 16.4.1 Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.7 of this Agreement provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to the employee's 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 the employee multiplied by the employee's equivalent hourly rate.
 - 16.4.2 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.
- 16.5 If any of said holidays falls on a full-time employee's regular day off, during which the

employee is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during their assigned work day. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.7 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

16.6 The parties recognize that the construction industry does not necessarily observe the same holidays as the City and that it may therefore be desirable to have employees work on days normally designated as holidays for the City. Thus, notwithstanding any provision of this Article to the contrary, if an employee and the Department Director or designee mutually agree in advance of any holiday that it is desirable for purposes of workload management to permit said employee to work on a day designated as a holiday in section 16.1 of this Article, the employee may work and be paid at their regular rate of pay. Furthermore, in lieu of any holiday premiums provided elsewhere in this Article for work on such holiday the employee shall schedule a different, regularly scheduled work day to be on leave with full pay at the employee's regular rate of pay, provided that such scheduling shall be done in advance of said regularly scheduled work day and shall be subject to the approval of the Department Director or designee.

16.7 Holiday Closure. The City Manager or designee may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year's holidays. Department Directors or designees will determine which services will remain open. In the event of a holiday closure and with approval of the Department Director or designee, employees may take time off during the closure period, but taking time off shall not be a requirement.

16.7.1 Employees electing to take time off during a holiday closure 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 seniority and department seniority. Eligible employees who have been employed by the City for less than thirteen (13) bi-weekly pay periods may use available vacation during the closure.

ARTICLE 17 VACATION AND PERSONAL LEAVE

17.1 Vacation Accrual Rates. Each eligible full-time employee, who has been employed as such for at least thirteen (13) bi-weekly pay periods, shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872,

or amendments thereto. An employee shall be entitled to accrue vacation leave 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 their employment as specified below:

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

17.2 Vacation Leave Accrual. 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.

17.3 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease and if the employee has taken more vacation leave than the employee had accrued at the time of termination of their employment, there shall be deducted from the employee’s final pay, or the employee shall refund to the City such pay as the employee shall have received for vacation leave theretofore taken by the employee.

17.3.1 The provisions of Subsection 17.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of their death, or their entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.

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

17.5 Vacation Pay. If, in the judgment of the City Manager or designee, it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, the City Manager or designee may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to their regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, the employee may file an election in writing with the Office of Employee Relations to carry over such leave to the subsequent cycle of 26 biweekly pay periods.

17.6 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 work week, unless the employee elects or consents to commence such leave at another and different time.

17.6.1 Subject to the above provisions, preference of vacation leave timing in any calendar year shall be determined as follows:

17.6.1.1 The work unit may determine the method for scheduling vacations, subject to departmental approval. Changes to an established department vacation scheduling policy are subject to ten (10) calendar days advance notice to the Union, in order to discuss the proposed changes or request to Meet-and-Confer, if applicable.

17.6.1.2 In the absence of an established department vacation scheduling policy, preference of vacation leave timing shall be given in order of seniority, except that pre-approved vacation shall be honored, subject to operational requirements. For purposes of this section, seniority shall be determined first by length of time served in the department, and then, by time served in the City.

17.7 Computation of Vacation Leave

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

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

17.8 Personal Leave. Each full-time employee shall be entitled to an additional eight (8) hours of personal leave hours which is granted in recognition that City employees may wish to observe a personal holiday that is not observed by the City. Each full-time employee shall be entitled to a total of thirty-two (32) hours per payroll calendar year. Such leave may be scheduled in one-half hour increments at any time, subject to approval of the supervisor. Personal Leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years.

- 17.8.1 Fulltime employees hired on or after July 1 of each payroll calendar year shall be entitled to only sixteen (16) hours in the payroll calendar year in which they were hired.

ARTICLE 18 SICK LEAVE

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

- 18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Only paid leave for holidays, vacation, compensatory time off or other paid leave shall be considered as time worked for purposes of this section.
- 18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non job related illness or injury; routine medical or dental appointments, or for the care related to the illness or injury of the employee's child, mother, father, spouse or domestic partner registered with the Department of Human Resources. In addition, accrued sick leave may be utilized by an eligible female employee due to illness, injury, or disability related to pregnancy or child-birth.
- 18.1.3 Up to forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandparent, grandchild, brother, sister, father-in-law, mother-in-law, step-father, step-mother, or step-child or designated person as defined in the City Policy Manual 4.2.1 Leaves of Absence Policy.

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.

- 18.1.4 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.
- 18.1.5 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he, or someone on his or her behalf, notifies the employee's immediate superior, Department Director, Director of Human Resources or designee, of the employee's intent to take such sick leave, and

of the reasons therefore, prior to or within one (1) hour after the commencement of the sick leave provided, however, that the City Manager or designee may waive the requirement of such notice upon presentation of a reasonable excuse of such employee.

18.1.6 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.

18.1.7 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. No single period of sick leave without pay shall exceed twelve (12) consecutive months, or eighteen (18) cumulative 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 separated from City service.

18.2 For employees hired on or before September 29, 2012, a sick leave payout shall be given to each full-time employee at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement Plan:

The employee is:

18.2.1.1 A member of the Federated Retirement Plan, and

18.2.1.2 Retired under the provisions cited in the plan, and

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

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

18.2.2 Terminated Employee with Vesting Rights

The employee has:

18.2.2.1 Terminated service with the City,

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

18.2.2.3 Following such termination, qualifies for retirement and retires under the provisions cited in the code, and

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

18.2.3 Death During Service

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

18.2.4 Death of Terminated Employee

The estate of any full-time employee who:

18.2.4.1 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

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

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

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

For example, if an employee's hourly rate is \$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 reestablished in the sick leave balance subject to payout.

18.4 Payout shall be determined as follows:

18.4.1 If an eligible full-time employee, as defined in subsection 18.2 above, at the time of their 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 the employee's 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) in accordance with 18.4.1.1.

18.4.1.1 Less than 400 hours: Hours accumulated as of June 22, 2013 x 50% of hourly rate as of June 22, 2013

400 – 799 hours: Hours accumulated as of June 22, 2013 x 60% of hourly rate as of June 22, 2013

800 – 1200 hours: Hours accumulated as of June 22, 2013 x 75% of hourly rate as of June 22, 2013

18.5 Any employee hired on or after September 30, 2012, shall not be eligible for any Sick Leave Payout.

18.6 Employees are only eligible for one (1) sick leave payout while employed by the City of San Jose, including breaks in employment.

18.7 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 before June 22, 2013, unused sick leave from prior periods of employment with the City shall be used. 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. Effective June 24, 2012, employees are no longer eligible to receive DLS.

19.2 Integration. The integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.

- 19.2.1 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 Any employee who, on July 1, 2018, was a member of the Organization, and any employee who subsequently becomes a member may, during the period June 1, 2023, to June 30, 2023, resign such membership and thereafter shall not be required to join as a condition of employment. A member seeking to resign such membership must contact the Union for information on that process.
- 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 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 President, or 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 obligation 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 Employees shall be entitled to use bereavement leave for up to five (5) days due to the death of a qualifying relative. The days of bereavement leave need not be consecutive. Each full time 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. Due to the employee's regular schedule, if the five (5) day entitlement exceeds forty hours, employees may supplement the remaining time off using their accrued leave balances, including, but not limited to sick leave. All leave must be used within three (3) months following the death of an eligible person. Under extreme circumstances, the three (3) month requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.

- a) Parents/Step-parents
- b) Spouse
- c) Child/Step-child
- d) Brother/Sister/Step-brother/Step-sister/Half-brother and Half-sister
- e) Grandparents/Step-grandparents
- f) Great grandparents/Step-great grandparents
- g) Grandchildren
- h) Sister-in-law/Brother-in-law/Daughter-in-law/Son-in-law
- i) Domestic Partner

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

ARTICLE 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 Disability retirement benefit amounts will be offset by Workers' Compensation payments, except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.
- 24.1.2 Administrative costs of the Federated Retirement System are to be paid from the retirement fund.

ARTICLE 25 RETIREE HEALTHCARE FUNDING AND BENEFITS

- 25.1 The City and the Employee Organization have agreed to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition began on June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.385 of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 25.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement and that the Employee Organization will support such amendments.
- 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, the first increment which was effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of the ARC may vary upward or downward. The City and Employee Organization agree that the retiree healthcare contribution rates as of June 20, 2015, shall remain in effect until December 19, 2015. The City and plan members shall be contributing the contribution rate based upon the full Annual Required Contribution, beginning on December 20, 2015. In subsequent fiscal years, the City and the plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.385 of the San Jose

Municipal Code.

- 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 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 received 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 pay period following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. The City will pay the unfunded liability contribution that these employees and the City would have otherwise paid had they gone into the retiree healthcare defined benefit program.
- 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 PROBATIONARY PERIODS

- 26.1 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.
- 26.2 The City may at its discretion extend up to a maximum of six (6) months, the probationary period of an employee appointed to a position in this unit. The employee will be notified in writing of the length and reason of the extension.

ARTICLE 27 DISCIPLINARY ACTION

- 27.1 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.
- 27.2 Step Reduction: In addition to other formal disciplinary actions, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the nine-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.
- 27.3 No provision 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 28 PERFORMANCE EVALUATION

- 28.1 The purpose of performance evaluations is to have formal communication between supervisor and employee regarding job performance.
- 28.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.
- 28.2.1 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.
- 28.3 If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made to the Department Director or designee within thirty (30) calendar days from the date the employee receives the final performance appraisal. If the employee is dissatisfied with the decision of the Department Director or designee, the employee may, within ten (10) calendar days from the Director's, or designee's, response, request a hearing with the City Manager or designated representative. Such request shall be in writing and shall

include the reason(s) the employee is not satisfied with the decisions previously rendered.

28.3.1 The City Manager or designated representative shall hold a hearing within a reasonable time, and within ten days of the hearing shall inform the employee of the decision. The decision of the City Manager shall be final. This will be the only appeal process applicable to review performance appraisal. The employee shall have the right to union representation at the hearing with the Department Director and/or the City Manager or designee.

28.4 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 29 EMPLOYEE ASSISTANCE REFERRAL

29.1 Performance problems are sometimes related to personal or work-related problems, which may be improved through the Employee Assistance Program (EAP). Therefore, if a supervisor believes that an employee’s work performance is impaired and can be improved through the EAP, a supervisor, with department director approval, may require the employee to attend an initial screening session with the Employee Assistance Program.

29.2 The employee shall receive paid release time to attend the initial appointment and must provide proof of attendance. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions, unless the employee voluntarily signs a release of information form. 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.

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

ARTICLE 30 TIME DONATION PROGRAMS

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

ARTICLE 31 CONTINUED PROFESSIONAL TRAINING

The Department of Planning, Building, and Code Enforcement shall endeavor to provide up to twenty-four (24) hours of training per fiscal year, as is relevant to each ABMEI member

employed by the City. Such training shall be scheduled at the discretion of the Director of Planning, Building, and Code Enforcement and employees shall be compensated at the appropriate rate for attendance at the training.

ABMEI shall make recommendations regarding training needs and advise the Department Director and the training committee of specific training opportunities.

ARTICLE 32 SUBSTANCE ABUSE

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

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 an Employee Commute Benefit Program through the Santa Clara Valley Transit Authority ("VTA") will be available to eligible employees, subject to the terms of the Employee Commute Benefit Program as defined in Article 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

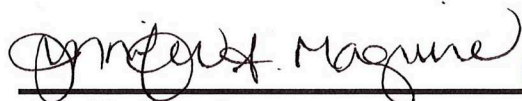
- 34.1 City Paid Union Release Time (URT). The designated bargaining unit representative(s) shall use the City Paid Union Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. Upon request by the City, the bargaining unit 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 24th day of May 2023, between the City of San Jose and The Association of Building, Mechanical and Electrical Inspectors (ABMEI), 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 6, 2023, and ratified by the Association of Building, Mechanical and Electrical Inspectors on or before June 1, 2023.

For The City of San Jose:

For The Association of Building,
Mechanical and Electrical Inspectors
(ABMEI):

 11/16/23

Jennifer Maguire
City Manager

 11/8/2023

Mary Reed
ABMEI President

 11/13/23

Jennifer Schembri
Director of Employee Relations

 11/8/2023

David Floyd
ABMEI Vice President

 11-17-2023

Carolyn Gibson
Senior Executive Analyst
Office of Employee Relations

 11/8/2023

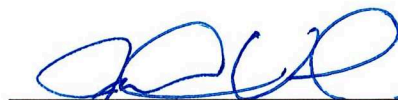
Shawn Moresco
ABMEI Negotiation Team Member

 11/13/23

Iliana Plascencia
Executive Analyst
Office of Employee Relations

 11/8/2023

Gary Myrah
ABMEI Negotiation Team Member

 11/8/2023

John Van Every
ABMEI Negotiation Team Member