

MEMORANDUM OF AGREEMENT

Between

The City of San José

And

**Peace Officer Park Ranger Association
(POPRA)**



January 1, 2020 – June 30, 2023

**Peace Officer Park Ranger Association
Memorandum of Agreement
January 1, 2020 – June 30, 2023**

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MEMORANDUM OF AGREEMENT
City of San José
And
The Peace Officer Park Ranger Association
January 1, 2020 – June 30, 2023

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, on February 26, 2020, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Union of Operating Engineers, Local 3, hereinafter referred to as the "Union."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective January 1, 2020, except where otherwise provided, and shall remain in effect through June 30, 2023. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Union receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

ARTICLE 2 RECOGNITION

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

ARTICLE 3 PURPOSE

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

ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution No. 39367 of the Council of the City of San Jose and in Part 2 - Definitions, of Chapter 3.04 of Title

III, of the San Jose Municipal Code unless it is apparent from the context that a different meaning is intended.

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Wages

5.1.1 Fiscal Year 2019-2020. In acknowledgement that employees represented by POPRA have not received any wage increase in Fiscal Year 2019-2020, employees represented by POPRA shall receive a 5% ongoing non-pensionable compensation increase effective April 5, 2020. Effective April 5, 2020, all employees holding positions in classifications assigned to POPRA shall receive an approximate 5% ongoing non-pensionable compensation increase.

3.75% non-pensionable Crisis Intervention Training premium pay effective Fiscal Year 2019-2020. Effective April 5, 2020, the Crisis Intervention Training premium pay shall be a total of approximately 3.75%. Employees who sign-up or have completed the Crisis Intervention Training by April 5, 2020, will be eligible to receive the non-pensionable Crisis Intervention Training premium pay.

5.1.2 Fiscal Year 2020-2021. 3% general wage increase effective Fiscal Year 2020-2021. Effective October 4, 2020, all salary ranges for employees holding positions in classifications assigned to POPRA shall be increased by approximately 3%.

5.1.3 Fiscal Year 2021-2022. 3% general wage increase effective Fiscal Year 2021-2022. Effective the first full pay period of Fiscal Year 2021-2022, all salary ranges for employees holding positions in classifications assigned to POPRA shall be increased by approximately 3%.

5.1.4 Fiscal Year 2022-2023. 3% general wage increase effective Fiscal Year 2022-2023. Effective the first full pay period of Fiscal Year 2022-2023, all salary ranges for employees holding positions in classifications assigned to POPRA shall be increased by approximately 3%.

5.2 Shift Differential. Eligible employees, as defined herein, regularly assigned to work a swing shift, shall be paid a shift differential of \$1.55 per hour for each eligible hour, as defined herein, to the nearest fifteen (15) minutes, of work performed. Eligible employees, as defined herein, regularly assigned to work a graveyard shift shall be paid a shift differential of \$1.75 per hour, as defined herein, to the nearest fifteen (15) minutes of work performed.

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

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

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

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

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

5.3 Working in a Higher Classification.

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

5.3.1.1 Employees specifically assigned in writing to duties of a higher classification, pursuant to section 5.3.1, shall be compensated at the rate in the salary range of the higher class which is at least five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class provided, however, that the employee shall not receive any compensation unless the assignment is for at least 50% or more of the scheduled shift or longer. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification.

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

5.4 Health Insurance.

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

5.4.2 The City will pay ninety percent (90%) of the full premium 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.

- 5.4.3 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.
 - 5.4.4 The City will pay eighty-five percent (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.
 - 5.4.5 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.
 - 5.4.6 The Kaiser Permanente HSA \$3,000 Deductible HMO Benefit Plan will be available to employees represented by POPRA in addition to the existing options.
 - 5.4.7 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.
- 5.5 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans. All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).

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

- 5.5.1 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.
- 5.6 Payment-in-lieu of Health and/or Dental Insurance Program. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu. The payment-in-lieu of health and/or dental insurance has a 4-tier structure (Employee, Employee plus Spouse/Domestic Partner, Employee plus Child(ren) and Family).

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

Health Insurance Tier	Health-in-Lieu	Dental-in-Lieu
Employee	\$89.09	\$6.65
Employee plus spouse/domestic partner	\$147.87	\$13.30
Employee plus Child(ren)	\$129.39	\$11.64
Family	\$221.84	\$19.95

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

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

- 5.6.2 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek of less than thirty-five (35) regular work hours per week or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must complete an attestation e-form through eWay to certify that they have alternate group coverage.
- 5.6.3 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period or within thirty (30) days of a qualifying event as defined in the Human Resources Benefits Handbook occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event must wait until the next open enrollment period to enroll in 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 and changes their election within thirty (30) days of loss of coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.
- 5.6.4 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek of less than thirty-five (35) regular work hours per week, or employee loses or does not have alternate group 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, or within thirty (30) days of a qualifying event.
- 5.6.5 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide an enrollment change form and verification that alternate coverage has been lost.

- 5.6.5.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.
 - 5.6.5.2 Dental Insurance. To enroll in a City dental insurance plan following loss of alternate group 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.
- 5.7 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited for the time worked, or for three (3) hours at the appropriate rate (1.5), whichever is greater. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three hours, after which time the employee would be eligible for additional pay, but only for actual hours worked.
- 5.8 Standby Pay. Employees who are required to perform standby duty shall be credited with one (1) hour compensation at the appropriate rate (1.5) for each eight (8) hour shift the employee performs standby duty. In the event that the employee is called back to work, they shall be entitled to the compensation provided by Section 5.7 above, in addition to the one-hour of standby compensation for that eight (8) hour shift.
 - 5.8.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.
 - 5.8.2 Employees who do not return to work but who are contacted by telephone, pager, or computer shall be paid for actual time worked at the appropriate rate of pay.
- 5.9 Jury Duty. 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:
 - 5.9.1 Employees assigned to a day shift. In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.
 - 5.9.1.1 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.
 - 5.9.1.2 In those cases in which the employee is not released by the court until after 1:00 p.m. the employee need not return to work. The employee

receives their regular base pay for that shift, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.

5.9.2 Employees assigned to a swing or graveyard shift who are called for jury selection. Employees assigned to a swing or graveyard shift, as defined in Section 5.2 of this Article, if released by the court at 1:00 p.m. or earlier shall report for duty at the scheduled beginning of the employee's assigned shift.

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

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

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

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

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

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

5.10 Witness Leave.

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

- 5.10.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be credited with overtime for the time spent in court, or for two hours, whichever is greater, less any and all witness fees which may be received by the employee. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City. An employee subpoenaed as a witness shall not in and of itself constitute being a party to the action.
- 5.10.3 Upon service of subpoena, an employee shall immediately advise their Department Director or designee of the time when the employee is required to appear in Court.
- 5.10.4 Employees who are required to perform standby duty for Witness Leave shall be entitled to the compensation provided by Section 5.8 (Standby Pay). In the event the employee is called from off-duty to testify in any court, under subpoena, by reason of their employment with the City, the employee shall be entitled to the same compensation provided by Section 5.10.2 above, in lieu of the compensation provided by Section 5.7 (Call Back Pay).

5.11 Tuition Reimbursement.

The City will reimburse each employee 100% of expenses incurred, up to \$1,000.00 per fiscal year, for registration, tuition and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service. Section 4.3.1 of the City Policy Manual outlines additional details of the program. Of the \$1,000.00, up to \$600.00 may be used for non-college accredited courses, workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee.

5.12 Uniform Allowance, Safety Equipment and Protective Prescription Safety Glasses.

- 5.12.1 An annual Uniform Allowance not to exceed \$800.00 shall accrue for eligible employees regularly assigned to the classifications of Park Ranger (2423) and Senior Park Ranger (2426), provided that such eligible employees are required, in the performance of the assigned duties of such classifications, to wear an approved uniform.
- 5.12.2 Payment shall be made during the first two (2) pay periods of each month, in the amount of \$33.33 per biweekly pay period. If an eligible employee is on unpaid leave or unpaid status for a period of one (1) full pay period or more, the employee will not receive the uniform allowance for that pay period(s).
- 5.12.3 Safety Equipment. Employees in the classification of Park Ranger (2423) and Senior Park Ranger (2426) who are required while on duty, to wear the following, shall be provided each of said items: utility belt, four (4) belt keepers, handcuffs, handcuff case, protective vest, rainwear including raincoat and rain pants, OC spray, OC spray case, collapsible baton and scabbard. Such items shall remain the property of the City and shall be returned to the City upon the employee's separation from employment.

- 5.12.4 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.
- 5.13 Bilingual Pay. Eligible full time employees shall be compensated at the rate of \$29.00 per biweekly pay period for each pay period.
- 5.13.1 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
- 5.13.2 The duties currently assigned to an employee and/or currently being performed by an employee requires utilization of a non-English language on a regular basis.
- 5.13.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to provide advanced notice to the Union, pursuant to Article 9.
- 5.13.4 In the event an eligible employee is on a paid or unpaid leave of absence, for a period of one full pay period or more, the appropriate reduction in the above-mentioned compensation shall be made.
- 5.13.5 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Human Resources. The written decision of the Director of Human Resources shall be final, with no process for further appeal.
- 5.14 Life Insurance. The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.

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 normal work schedule shall be 40 hours consisting of four (4) days of ten (10) hours each, inclusive of a lunch period.
- 6.2.1 It is understood and agreed that specific employees may be assigned a different work schedule as a result of a transfer, promotion, shift rotation, or other changes made pursuant to this agreement or applicable ordinances or resolutions.

Employees who work alternating shifts, i.e. weekends, may request review of the methodology and procedures to assign employees to particular shifts. The request for review will be made through the union, to the employee's department and to the Office of Employee Relations. The department and Office of Employee Relations will arrange and participate in meetings with the union for the purpose of discussing changes that will meet the operational needs of the City and the needs of the employee.

- 6.2.2 When an employee's work schedule is changed involuntarily, the employee will be given fourteen (14) calendar days advance notice prior to the implementation of the revised schedule except when there are extenuating circumstances as determined by the City. This provision does not apply to any schedule changes that may result as part of the Return-to-Work or accommodation process, or compliance with this agreement. Nothing in this provision shall preclude an employee from agreeing to begin the revised schedule in less than fourteen (14) calendar days.
- 6.2.3 A department may change the workday or work schedule in a section including the adoption of a five day, eight-hour per day schedule, if it determines such schedule is in the City's best interest.
- 6.2.4 The Union may discuss with a department specific proposals for scheduling flexibility within the context of the regular 40-hour workweek. The Department may adopt such plans on a trial or permanent basis during the life of this contract.
- 6.2.5 Employees may be required to respond to emergency calls and must be available to perform activities that are work related during their entire work shift. If an employee is unavailable to perform activities that are work related for any reason during their work shift, they must request to use their own leave and such requests are subject to supervisory approval prior to the use of such leave.
- 6.3 Employees shall be given three (3) consecutive days off when working the schedule provided in 6.2, and two (2) consecutive days off when assigned to work a five day, eight-hour per day schedule even though the days off are in different workweeks, except, where due to a change in the employee's work schedule, it is impossible to provide two (2) or three (3) consecutive days off.
- 6.4 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off, with the exception of holiday leave, shall not be considered time worked for the purpose of calculating eligibility for overtime.
 - 6.4.1 Notwithstanding 6.4 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.
- 6.5 Except as provided in 6.4.1, overtime worked shall be compensated at the 1.5 rate. An employee assigned to work overtime may elect to either be paid for such overtime worked or be credited with compensatory time, subject to Department approval.

- 6.6 Compensatory time credited to an employee, and which is not taken within 26 pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 6.7 Notwithstanding any other provision of this Section to the contrary, the Department Director, or designee, may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced will specify a date by which time each affected employee must elect to either:
- a) be paid for all accrued, unused compensatory time, OR;
 - b) be paid for all but 24 hours of such accrued, unused compensatory time, OR;
 - c) retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.7.
- 6.7.1 Any employee not making an election will retain their compensatory time, subject to other provisions of this Section.
- 6.8 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time earned from and after July 1, 1968, shall be paid for such hours of unused compensatory time at the appropriate 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.
- 6.9 A 15-minute paid rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

ARTICLE 7 DUES DEDUCTION

- 7.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a Unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws, provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.
- 7.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Union as regular monthly dues.
- 7.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty one (21) days following the pay period in which the deductions were made.

- 7.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer or designee, on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 7.5 If, through inadvertence or error the City fails to make the authorized deduction or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 7.6 It is expressly understood and agreed that the Union will refund to the employee any Union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 7.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 7.8 The City shall provide at no charge to the Union, a monthly printout listing bargaining unit employees by department and position, worksite location (to the extent possible), full-time equivalency, and employee address. The City shall also provide at no charge to the Union, a monthly printout listing employees who have experienced a change in active employment status. The Union agrees that such information will be treated in a confidential manner.

ARTICLE 8 MANAGEMENT RIGHTS

- 8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement or any applicable law, the City retains all rights, powers and authority granted to it pursuant to law or the City Charter including, but not limited to, the right: (a) to direct the work force; (b) to increase, decrease or reassign the work force; (c) to hire, promote, demote; discharge or discipline for cause; (d) to transfer or reclassify employees; (e) to provide merit increases; (f) to assign employees days of work, shifts, overtime and special work requirements; and (g) to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit. The City's failure to exercise a management right does not preclude the City from exercising it at some time in the future.
- 8.2 Except as to the extent that the rights are specifically limited by the provisions of the Agreement or any applicable law, the City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Union of Operating Engineers, Local No. 3 representing such employee.
- 8.3 The City has the absolute right to require that an employee return to assigned duties in the time of an emergency or to comply with the provisions of City Administrative Policy

Manual Section 1.3.4, Disaster Service Workers. The City will not, during the term of this agreement enforce the Civil Service rule that City employees reside within 30 air miles of First and Santa Clara Streets.

ARTICLE 9 ADVANCE NOTICE

Whenever the City changes work rules or workplace policies, or issues new work rules or workplace policies, the Union will be given written notice at least ten (10) working days, absent emergency, before the effective date of the rule or policy. This notice is provided in order that the Union may request to discuss or request to meet and confer regarding the rule or policy with the City before it becomes effective.

ARTICLE 10 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 10.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 10.2 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.
- 10.3 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.
- 10.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

ARTICLE 11 FULL FAITH AND CREDIT

- 11.1 It is understood and agreed that:
 - 11.1.1 Participation by any employee in a unit represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for any person, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes the services provided by employees in the representation unit, or the failure to perform lawfully required work, shall subject the employee to disciplinary action up to and including discharge.
 - 11.1.2 If the Union, its officers or its authorized representatives violate provision 11.1.1 above or tolerate the violation of provision 11.1.1 above and after notice to responsible officers or business representatives of the Union such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 11.1.1

above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer or designee, may suspend or cancel any or all payroll deductions payable to or on behalf of members of such Union, and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer or designee shall not be subject to review under the provisions of Article 13 entitled Grievance Procedure.

ARTICLE 12 SAFETY

- 12.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 12.2 An employee who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try to resolve it at that level. The employee may at any time request that a union representative and an OE#3 Safety Officer be present for any part of the process.
- 12.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may report the unsafe conditions to the Department Director or designee or the Department Safety Officer and try to resolve it at that level.
- 12.4 If the employee is not satisfied with the response of the Department Director or designee or the Department Safety Officer, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA regulations. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform.
- 12.5 No provisions of this Article shall be subject to the grievance procedures of this Agreement. If the Union is not satisfied with the City's determination, the Union can request to meet with the Office of Employee Relations to discuss the City's determination.

ARTICLE 13 GRIEVANCE PROCEDURE

- 13.1 Any dispute between the City and an Employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of

employees in the representation unit, the Union representative may file a grievance on behalf of such employee(s).

13.2 Grievances involving Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.

13.3 Alternative to the Grievance Procedure.

As an alternative to the formal grievance procedure, the City and the Union may by mutual agreement meet and attempt to informally resolve problems which arise involving contract interpretations and other matters affecting the relationship between the City and the Union. Agreement to use the alternative to the grievance procedure must comply with timelines set forth in this article. A grievance must be presented within the timelines set forth in Articles 13.4.2 and 13.5.1. However, once the parties mutually agree to informally resolve problems, the formal grievance procedure timelines are tolled pending the informal resolution process. If, in an attempt to informally resolve issues, the parties discuss matters that are not otherwise subject to the grievance procedure, such matters shall not be eligible to be grieved under the grievance provisions of this MOA.

13.4 Step I.

13.4.1 An employee may present the grievance orally or in writing either directly or through the Union representative to the immediate supervisor.

13.4.2 The grievance must be presented within twenty-one (21) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral or written grievance, the immediate supervisor shall give the employee an oral or written reply.

13.4.3 If the employee is not satisfied with the reply of the immediate supervisor, the employee may appeal the grievance to 13.5 - Step II.

13.5 Step II.

13.5.1 If the employee desires to appeal the grievance to 13.5 - Step II, the grievance shall be reduced to writing and presented to the Department Director or designee, within five (5) working days following receipt of the immediate supervisor's oral or written reply.

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

13.5.3 The Department Director, or designee, may arrange a meeting between the Department Director or designee, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to 13.5 - Step II.

13.5.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to 13.6 - Step III.

13.6 Step III.

13.6.1 If the employee desires to appeal the grievance to 13.6 - Step III, the employee shall submit the written grievance to the Municipal Employee Relations Officer or designee, within five (5) working days following receipt of the written decision at 13.5 - Step II. If an employee is unavailable to sign the grievance, the Business Representative may sign on behalf of the employee. In that event, the grievance must include the name of the employee on whose behalf the grievance is being filed.

13.6.2 Within ten (10) working days after receipt of the appeal to 13.6 - Step III, the Municipal Employee Relations Officer or designee, shall schedule a meeting with the employee, the appropriate Union representative, the Department Director or designee, to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within five (5) working days following the meeting.

13.6.3 If the employee is not satisfied with the decision of the Municipal Employee Relations Officer or designee, the appropriate Union representative may appeal the grievance to 13.7 - Step IV - Arbitration.

13.7 Step IV.

13.7.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer or designee, in writing, within 14 calendar days following receipt by the employee of the written answer at 13.6 - Step III.

13.7.2 Within 14 calendar days following receipt of the notice of appeal to 13.7, Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues each party will prepare its statement of the issue or issues, and submit the separate statement of issue or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue or issues are.

- 13.7.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Any costs associated with the mutually agreed upon joint request for a list of persons qualified to act as arbitrators from the State of California Mediation and Conciliation Service shall be divided equally between the parties. The City will process the joint request after receiving the Union's share of the cost for obtaining the list.
- 13.7.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one name remains, and that person shall be the arbitrator.
- 13.7.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues involved.
- 13.7.6 The decision shall be sent to the Municipal Employee Relations Officer or designee, and to the appropriate representative of the Union.
- 13.7.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 13.7.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this agreement to the specific facts involved and to interpret only applicable provisions of this agreement.
- 13.7.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

13.8 Designated Job Representative.

- 13.8.1 The City shall recognize no more than 2 Job Representatives who are properly designated by the Union for such work places or areas or groups of employees as shall be approved in writing by the Municipal Employee Relations Officer or designee.
- 13.8.2 Such designated Job Representatives shall be responsible for maintaining the bulletin board areas which are assigned for the exclusive use of the Union and they shall have during working hours, in urgent matters, the right to make reasonable telephone calls to the Business Representative of the Union for the purpose of reporting breaches of the Memorandum of Agreement or working conditions, except that they shall not have the right to stop any work nor to tell any employee that they cannot work on a particular assignment nor shall they conduct any Union business during working hours except as otherwise provided by provisions of this Agreement or as may be mutually agreed to by the parties.

13.8.3 One (1) Chief Steward may be designated by the Union for this bargaining unit and shall be authorized release time from regular City duties to attend the following functions:

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings.
- To attend Benefit Review Forum meetings.
- To attend meetings scheduled by the City Manager, or designee, when attendance is requested.

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

13.8.4 Release Time for Chief Steward and Job Representative Training. The Chief Steward and Job Representatives shall be granted a maximum of eight (8) hours paid release time during each calendar year to participate in training sessions related to the provisions of this agreement. The training shall be jointly conducted by the Union and City representatives according to an outline of such training activities to be submitted by the Union to the Office of Employee Relations for approval a minimum of 21 calendar days prior to the training session.

13.8.5 The City agrees to provide up to two (2) hours of paid release time every month for up to two (2) Stewards designated by the Union for the purpose of attending the Union's Stewards meeting only, if such a meeting is scheduled. A list of the designated employees shall be provided to the Office of Employee Relations at least five (5) working days in advance of the scheduled meeting.

13.8.6 Notification. The Union agrees to notify the Office of Employee Relations in writing of any changes of Chief Stewards or Job Representatives within 30 days of such change.

13.8.7 Release Time Restrictions. Release time shall not be provided for lobbying or political purposes. Release time is provided only to the extent that any employee is required or authorized to attend meetings, trainings or other authorized events during said employee's normal work schedule/hours. Employees are not entitled to receive overtime or regular compensation for attendance of meetings, trainings or other authorized events occurring outside of their normal work schedule/hours.

13.8.8 City Paid Union Release Time (URT). The designated bargaining unit representative(s) shall use the City Paid Union Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. Upon request by the City, the bargaining unit representative(s) shall provide the City with a general explanation of the business conducted when the URT code is used.

13.9 General Provisions.

- 13.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representative shall be kept to a minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.
- 13.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee or appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 13.9.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provision of this Article, including arbitration, has been utilized.
- 13.9.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 13.9.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 14 entitled Leaves of Absence, the employee shall file the grievance in writing at 13.4 - Step II within ten (10) calendar days following the date of separation.
- 13.9.6 Any of the time limits specified in 13.4 - Step I through 13.6 - Step III may be extended by written mutual agreement of the parties.

ARTICLE 14 LEAVES OF ABSENCE

- 14.1 A request for a leave of absence without pay shall be made in writing by the employee. The appointing authority or designee may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may, however, be extended not to exceed an additional six (6) months upon written request of the employee, subject to approval of the appointing authority or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 14.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by certified mail, return receipt requested, and shall be mailed no later than 30 days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled workday after the effective date of the cancellation, or on the first scheduled workday following the expiration of a leave, shall be considered a voluntary resignation

unless the failure to return is due to extenuating circumstances beyond the control of the employee.

- 14.3 Each employee who is granted a leave pursuant to the provisions of this Article, shall, upon return from leave, be entitled to the position within the classification held by the employee at the time the leave commenced.
- 14.4 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.
- 14.5 The employee is responsible for coordinating their return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps have been taken.
- 14.6 For purposes of this Article, seniority shall be defined in accordance with Subsection 15.4.1 of Article 15 entitled Layoff.
- 14.7 Voluntary Separation From Employment. Any employee who is absent without notification to the Department Director or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary separation from employment unless the failure to report, as determined by the City, is due to extenuating circumstances beyond the control of the employee. An employee will be considered to be absent without notification pursuant to this Section, if notification is not provided prior to the commencement of the second consecutive shift.
- 14.8 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined by the City to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 15 LAYOFF

- 15.1 Order of Layoff. When one or more employees in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
 - 15.1.1 Provisional employees in the order to be determined by the appointed authority.
 - 15.1.2 Probationary employees in the order to be determined by the appointing authority.
 - 15.1.3 Apprentice employees who are a part of an apprentice program, or employees in a trainee classification, in inverse order of seniority within the classification being reduced, or in a higher classification. In no case will a journey level employee be laid off before an apprentice employee. Nor will a journey level employee be required to move into an apprentice or trainee class.

- 15.1.4 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher classification.
- 15.1.5 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.
- 15.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least 30 calendar days' notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.
- 15.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:
- 15.3.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 15.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Human Resources Director or designee. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the most recent period of employment. Adverse decisions of the Human Resources Director or designee, regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
- 15.3.3 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.
- 15.4 As used in this Article, the following words and phrases shall be defined as follows:
- 15.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
- 15.4.2 A lower class shall mean a class with a lower salary range.
- 15.4.3 A position in a lateral class shall mean a position in a class with the same salary range.

- 15.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 15.5 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.
- 15.6 Layoff Reinstatement Eligible List.
- 15.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority; i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class.
- 15.6.2 In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 15.6.3 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 15.6.4 Any person reinstated to a class which is the highest class to which the employee would have been entitled at the time of the layoff shall have their name removed from the Reinstatement Eligible List.
- 15.6.5 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three year period specified herein may request that their name be replaced on a Reinstatement Eligible List and such person's name may, in the sole discretion of the Human Resources Director or designee, be returned to the Reinstatement Eligible List.
- 15.6.6 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 15.7 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 16 BULLETIN BOARDS

- 16.1 The Union may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Union is recognized.

- 16.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
- 16.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer or designee.
- 16.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee, who shall have the sole and exclusive right to order the removal of any objectionable material.
- 16.4 The Municipal Employee Relations Officer or designee shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 16.5 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.
- 16.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 17 HOLIDAYS

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

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

- 17.2 Holiday Closure. The City Manager or designee may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off; however, it shall not be a requirement. Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees taking lost time during the closure shall continue to receive vacation, sick leave, city-wide and department seniority accruals. Eligible employees who have been employed with the City for less than 13 biweekly pay periods may use available vacation leave during the holiday closure.
- 17.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of

this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the preceding Friday.

- 17.4 Except as otherwise provided, no such employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the Department Director or designee, may specify the days of the week and the hours of such days when any such employee in their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary they would be entitled to for that day at their regular rate of pay, and in addition shall receive compensatory time off duty equal to 1.5 the number of hours which the employee works on said holiday.
- 17.5 For employees on an alternate work schedule, if any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to eight (8) hours of compensatory time off duty for full day holidays. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, additional compensation equal to the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.
- 17.6 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition.

ARTICLE 18 VACATIONS AND PERSONAL LEAVE

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

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

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

Employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred,

vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount. It is the responsibility of the employee to track for compliance with this provision.

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

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

18.3 Computation of Vacation Leave.

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

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

18.4 Personal Leave. Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of twenty four (24) hours of personal leave per 26 pay period cycle. Such leave may be scheduled in fifteen (15) minute increments, at any time, subject to approval of the supervisor. Personal leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than twenty four (24) hours of Personal Leave in any given calendar year.

18.4.1 First Year of Employment. An employee hired after July 1 shall be provided a maximum of twelve (12) hours of personal leave in the first calendar year of employment.

ARTICLE 19 SICK LEAVE

- 19.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:
- 19.1.1 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.
- 19.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments, illness in the immediate family as defined herein; or absence of an eligible female employee due to illness, injury or disability related to pregnancy or child-birth. Immediate family shall be limited to the eligible employee's mother, father, spouse, child or domestic partner registered with the Human Resources Department. Up to 48 hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandparent, grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother, or stepchild.
- 19.1.2.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 20 Disability Leave, Part 20.2 or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Human Resources or designee, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.
- 19.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 19.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 20 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 20, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen (15) minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 19.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If

approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

- 19.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee notifies their immediate superior, Department Director, or designee of intent to take sick leave, and of the reasons for taking sick leave, at least one-half hour prior to the commencement of the sick leave. If the employee fails to notify their immediate supervisor, Department Director, or designee at least one-half hour prior to the commencement of the sick leave, it can result in disciplinary action unless the failure is due to extenuating circumstances extenuating beyond the control of the employee. The City Manager or designee, however, may waive the requirement of such notice upon presentation of a reasonable excuse by such employee. Upon written approval by the Office of Employee Relations and the OE#3 Union, departments may require an earlier call-in where work crew situations or other departmental needs require.
- 19.1.5 Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absence.
- 19.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job-related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of eighteen (18) consecutive or for eighteen (18) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months. Any employee who is unable to return to work at the expiration of either of these periods of time shall be considered to have voluntarily separated from City service.
- 19.1.7 Accrued sick leave may also be used in accordance with the Catastrophic Illness provisions contained in this MOA.
- 19.1.8 When an employee has exhausted all of his/her sick leave, the employee may be allowed to use accrued vacation or compensatory time in lieu of unpaid time subject to the approval of the Department Director or designee and pursuant to 19.1.5 above, may require medical verification.
- 19.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.
- 19.3 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

19.3.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.

19.3.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code (SJMC) Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.

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

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

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

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

19.5 Payout shall be determined as follows.

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

leave hours as of June 22, 2013, which were used), as follows:

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

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

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

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

ARTICLE 20 DISABILITY LEAVE

20.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) was the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD), resulted in providing employees 85% of their regular base salary. Effective April 27, 2014, employees were no longer eligible to receive DLS.

20.2 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave (and the integration of Sick Leave as provided for in Article 19.1.2.3) including the integration of accrued vacation, compensatory time, and sick leave as provided in Article 19.3, with Workers' Compensation may be considered to have voluntarily separated from employment.

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

- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

ARTICLE 21 MAINTENANCE OF MEMBERSHIP

21.1 Employee Rights.

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

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

21.2 Employee's Obligation to Exclusive Representation.

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

21.3 Hold Harmless. The Organization shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to membership dues.

ARTICLE 22 BEREAVEMENT LEAVE

22.1 Each full time or benefited part-time employee shall be granted bereavement leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee, employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an applicable relative. Under extreme circumstances, the fourteen (14)-day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.

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

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

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

ARTICLE 23 AUTHORIZED REPRESENTATIVES

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

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

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

ARTICLE 24 SEPARABILITY

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

ARTICLE 25 PROBATIONARY PERIOD EXTENSION

The City may at its discretion extend up 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 26 RETIREMENT – PENSION AND RETIREE HEALTHCARE

Pension and retiree healthcare benefits of the Federated Retirement System are to be paid in accordance with the provisions of the Plan and the Memorandum of Agreement on Retirement between the City and Operating Engineers, Local No. 3 (OE#3).

ARTICLE 27 ANNUAL AND SPECIAL PERFORMANCE EVALUATION

27.1 The City of San Jose Non-Management Performance Program Policy provides guidelines for evaluating the work performance of non-management employees.

27.2 Key Element Review. If the employee formally receives an overall performance rating of meets standard on either an annual or special performance evaluation, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director or designee. The employee must submit a written request to the Director or designee specifying the reasons for such request, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.

27.2.1 All employees represented by the Union shall be evaluated using the standard performance evaluation form as designated by Human Resources and the Office of Employee Relations. Any changes to the performance evaluation form shall be provided in advance to the Union pursuant to Article 9 of this agreement.

- 27.3 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below meets standard on either an annual or special performance evaluation, 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. The Director or designee shall look into the appeal request and provide a written response to the employee within thirty (30) calendar days of receipt of appeal or meeting, if one is held. If the employee is dissatisfied with the decision of the Director or designee, the employee may, within ten (10) calendar days from the Director's or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.
- 27.4 The City Manager, or designee, shall hold a hearing within a reasonable time, and within ten (10) calendar days of the hearing shall inform the employee of the decision. The decision of the City Manager, or designee, shall be final. This will be the only appeal process applicable to review a performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director, City Manager or designees.
- 27.5 Annual Performance Appraisals: Employees shall not receive an automatic salary step increase if they have an Annual Performance Appraisal with an overall rating below that of "Meets Standard" dated within twelve (12) months prior to the salary step increase.

ARTICLE 28 DISCIPLINE

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

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

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

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

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

No provisions of this Article shall be subject to the grievance procedures of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose

Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE 29 EMPLOYEE ASSISTANCE REFERRAL

- 29.1 If deemed desirable for job-related reasons, a supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP). The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.
- 29.2 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

ARTICLE 30 SUBSTANCE ABUSE TREATMENT PROGRAM

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

ARTICLE 31 ALTERNATE WORK SCHEDULE

Employees may be eligible for an Alternative Work Schedule, subject to the provisions and conditions in the City of San Jose Alternative Work Schedules Policy. Neither the failure of the Department to enter in an alternative schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 13.

ARTICLE 32 LABOR MANAGEMENT COMMITTEES (LMC)

- 32.1 Purpose. To serve as an advisory committee and to facilitate employee involvement in issues which affect the immediate work environment and to facilitate positive union-management relations.
- 32.2 Structure. The Department may set up a committee based upon mutual agreement with Labor selecting one (1) employee representative for the committee. There may be alternates as appropriate. All participants are encouraged to propose issues for discussion, and the committee will set priorities. Decision making within this forum will be by consensus. The LMCs will schedule quarterly meetings, and establish a method for calling additional meetings to handle issues on an ad hoc basis.
- 32.3 Authority. LMCs provide a forum for discussion of employee and management concerns and may recommend solutions. LMCs may be used for a preliminary review of department initiated changes to policies or practices. Guidelines will be issued by the Office of Employee Relations on the types of subjects that would be appropriate for discussion e.g., alternate work schedules, shift bidding, vacation bidding, internal transfer policies, clarification of rules and departmental procedures, rumor control etc.

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

The Office of Employee Relations and the OE#3 Business Agent Business Agent will be involved in LMC meetings as necessary. The LMCs should keep both parties informed of their discussions, and provide copies of any written materials they generate. The Office of Employee Relations will provide training for the committee members and an orientation for Department Directors. This process is not designed for individual grievances, disciplines or to replace the Steward system.

ARTICLE 33 TIME DONATION PROGRAMS

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

ARTICLE 34 NEW EMPLOYEE ORIENTATION

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

ARTICLE 35 EMPLOYEE COMMUTE BENEFIT PROGRAM

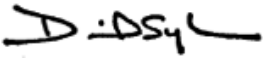
The Employee Commute Benefit Program shall be as follows:

- 35.1 Full-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.
- 35.2 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 35.1.
- 35.3 Pursuant to the Employee Commute Benefit Program, eligible employees shall be allowed to use pre-tax dollars ("Pre-Tax Payroll Deduction Program") to pay for transit service beyond those provided by VTA. The administrative fees of the Pre-Tax Payroll Deduction Program will be paid for by the City. The Pre-Tax Payroll Deduction Program shall enable employees to use pre-tax dollars to pay for non-VTA transit services, which may include, but are not limited to, Caltrain, the Hwy 17 Express Bus, and BART.

THIS AGREEMENT executed on February 26, 2020, between the City of San Jose and the Peace Officer Park Ranger Association, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

This Memorandum of Agreement was approved by the City Council of the City of San Jose on March 17, 2020, and ratified by the Peace Officer Park Ranger Association on March 4, 2020.

FOR THE CITY:

 12/15/2020

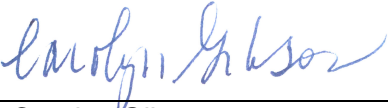
David Sykes Date
City Manager

 12/15/2020

Jennifer Schembri Date
Director of Employee Relations
Director of Human Resources

 12/15/2020

Elsa Cordova Date
Assistant to the City Manager
Office of Employee Relations


 12/15/2020

Carolyn Gibson Date
Senior Executive Analyst
Office of Employee Relations


 12/15/2020

Jon Cicirelli Date
Director, Parks Recreation and
Neighborhood Services

FOR THE UNION:

 12/13/2020

Mary Blanco Date
Business Representative
POPRA, Operating Engineers, Local 3 (OE#3)

 12/4/2020

Mathew Mendriski Date
Team Member
POPRA

EXHIBIT 1

POPRA Pay Plan (As of July 1, 2020)							
Job Code	Classification	Steps	Hourly Rate (Min)	Hourly Rate (Max)	Annual Rate (Min)	Annual Rate (Max)	Notes
2423	Park Ranger	9	\$ 31.59	\$ 38.51	\$ 65,707.20	\$ 80,100.80	5
2426	Park Ranger, Senior	9	\$ 34.77	\$ 42.37	\$ 72,321.60	\$ 88,129.60	5

Estimated POPRA Pay Plan (As of October 4, 2020)							
Job Code	Classification	Steps	Hourly Rate (Min)	Hourly Rate (Max)	Annual Rate (Min)	Annual Rate (Max)	Notes
2423	Park Ranger	9	\$ 32.54	\$ 39.67	\$ 67,683.20	\$ 82,513.60	5
2426	Park Ranger, Senior	9	\$ 35.81	\$ 43.64	\$ 74,484.80	\$ 90,771.20	5

Estimated POPRA Pay Plan (As of the First Full Pay Period of FY 21-22)							
Job Code	Classification	Steps	Hourly Rate (Min)	Hourly Rate (Max)	Annual Rate (Min)	Annual Rate (Max)	Notes
2423	Park Ranger	9	\$ 33.52	\$ 40.86	\$ 69,721.60	\$ 84,988.80	5
2426	Park Ranger, Senior	9	\$ 36.88	\$ 44.95	\$ 76,710.40	\$ 93,496.00	5

Estimated POPRA Pay Plan (As of the First Full Pay Period of FY 22-23)							
Job Code	Classification	Steps	Hourly Rate (Min)	Hourly Rate (Max)	Annual Rate (Min)	Annual Rate (Max)	Notes
2423	Park Ranger	9	\$ 34.53	\$ 42.09	\$ 71,822.40	\$ 87,547.20	5
2426	Park Ranger, Senior	9	\$ 37.99	\$ 46.30	\$ 79,019.20	\$ 96,304.00	5

Notes Key	Notes Description
5	Classification also receives a 5% ongoing non-pensionable compensation increase in addition to the salary listed. For additional information, please see the bargaining unit's Memorandum of Agreement (MOA) or the employee unit's Compensation Summary.