

2021 POA NEGOTIATIONS PACKAGE PROPOSAL A

TERM

- July 1, 2021 – June 30, 2022

WAGES

- Fiscal Year 2020-2021

3% general wage increase effective the first full pay period following Council approval in open session. Effective the first full pay period following Council approval in open session, all salary ranges for employees holding positions in classifications assigned to the POA shall be increased by approximately 3%.

- Fiscal Year 2021-2022

3% general wage increase effective the first full pay period of 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 the POA shall be increased by approximately 3%.

BIOMETRIC TIMECLOCKS

- Biometric Timeclocks (See Attached)

UNIT DESIGNATION FOR DEPUTY CHIEF OF POLICE

- Unit Designation for Deputy Chief of Police (See Attached)

DISCIPLINE ARBITRATION

- Discipline Arbitration (As proposed on March 12, 2021 – See Attached)

ANNUAL PERFORMANCE APPRAISALS

- Performance Evaluation (See Attached)

REHIRED RETIREE

- Rehired Retiree (See Attached)

LATERAL OFFICER VACATION ACCRUAL

- Lateral Officer Vacation Accrual (See Attached)

COMPENSATORY TIME

- Compensatory Time (See Attached)

MODIFICATION OF BARGAINING UNIT WORK

- Modification of Bargaining Unit Work (See Attached)

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SIDE LETTERS

- Police Reforms Work Plan Items and Reimagining Community Safety (See Attached)

OTHER TERMS

The terms contained in the Promotional Memorandum of Agreement shall remain status quo with a term of July 1, 2021 to June 30, 2022.

**This package proposal is submitted in an attempt to reach a settlement. In the event the package proposal is not accepted in its entirety, the City reserves the right to modify, amend and/or add proposals.*

CITY PROPOSAL – BIOMETRIC TIMECLOCKS

City Proposed Language:

Effective as soon as practicable after Council approval in Open Session of a Tentative Agreement for a successor Memorandum of Agreement (MOA) between the City and the POA, biometric timeclocks will be implemented for sworn employees in the Police Department, where operationally possible as determined by the City Manager's Office.

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CITY PROPOSAL– UNIT DESIGNATION FOR DEPUTY CHIEF OF POLICE

City Proposed Language:

The unit designation for the Deputy Chief of Police (2219) classification shall be as listed below.

Unit	FLSA Status	Class Title
Unit 99 (Executive Management)	Exempt	Deputy Chief of Police

Effective as soon as practicable after Council approval, all current and future incumbents and positions for the Deputy Chief of Police classification will be re-designated from the San Jose Police Officers' Association to Unit 99.

CITY COUNTERPROPOSAL–DISCIPLINARY APPEALS

City Proposed Language:

25.5 Step IV Arbitration

- 25.5.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Employee Organization representative may appeal the grievance to Arbitration. The appropriate Employee Organization representative shall notify the Director of Employee Relations, in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at Step III.
- 25.5.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting shall be scheduled by the Director of Employee Relations or designee with the appropriate Employee Organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator for determination.
- 25.5.3 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 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.
- 25.5.4 Within five (5) working days following receipt of the above referenced list, the parties shall schedule a meeting 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.
- 25.5.5 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 opinion and reasons for the opinion as soon after the hearing as possible.

25.5.5.1 For disputes between the City and an employee, or, between the City and the Employee Organization, regarding the interpretation or application of this Memorandum of Agreement, the opinion shall be final and binding on both parties, and shall be limited to the issue, or issues involved.

25.5.5.2 For disciplinary grievances as defined in article 25.8, the opinion shall be an advisory and non-binding opinion to the City Manager. The City Manager may accept the advisory opinion of the arbitrator or may impose the original disciplinary action described in the Notice of Intended Discipline. Nothing herein precludes the parties from settling the disciplinary matter by mutual agreement at any time.

- 25.5.6 The opinion shall be sent to the Director of Employee Relations and to the employee or appropriate representative of the Employee Organization.
- 25.5.7 Except as hereinafter provided, 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 schedule, whenever possible, shall be determined in advance of the hearing.
- 25.5.8 Witnesses who are employees and on duty at the time of scheduled appearance shall be released from duty without loss of compensation for the time required to testify. No overtime payments shall be made because of scheduled appearances.
- 25.5.9 Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. One spokesperson shall be permitted to be present without loss of compensation for grievances filed by the Organization.
- 25.5.10 Arrangements for release time for grievant's witnesses shall, wherever possible, be made with the Director of Employee Relations no later than twenty-four (24) hours in advance of the scheduled hearing.
- 25.5.11 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and

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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.

- 25.5.12 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.

25.8 Disciplinary Grievances

- 25.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters that are cognizable before the Civil Service Commission plus disciplinary transfers.
- 25.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.
- 25.8.3 Letters of reprimand may be appealed under this section only to the City Manager level.
- 25.8.4 Documented Oral Counselings (DOCs) retained by the Internal Affairs Division may be appealed under this section only to the level of Assistant Chief of Police. However, should a particular DOC be the result of the Assistant Chief's having reduced a higher form of discipline to a DOC with which the affected officer is still dissatisfied, such DOC may be appealed to the level of the Chief of Police. DOCs received for preventable, automobile accidents shall not be appealable unless the officer contends that the accident was not preventable.
- 25.8.5 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., Government Code Sections 3300 et. seq.).
- 25.8.6 An employee challenging a suspension, demotion, dismissal or disciplinary transfer shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil Service Commission. The opinion issued by the Civil Service Commission shall be an advisory and non-binding opinion to the City Manager. The City Manager may accept the advisory opinion of the Civil Service Commission or may impose the original disciplinary action described in the Notice of Intended Discipline. Nothing herein precludes the parties from settling the disciplinary matter by mutual agreement at any time.

Any employee who wishes to preserve the right of appeal to the Commission must comply with the time requirements for filing such appeal as specified in the Civil Service Rules. Within twenty (20) days of the date of a Notice of Discipline, the employee may file an appeal with the Civil Service Commission or pursue the grievance procedure or both. The grievance procedure shall begin at Step IV Arbitration for this process. Immediate arbitration shall not apply.

- 25.8.7 The employee shall confirm ~~his/her~~their election of remedies in writing to the Director of Employee Relations. If the employee files an appeal to the Civil Service Commission and also an appeal through the grievance procedure of this Agreement within the required timelines, the election of remedies must be made no later than 45 days from the date of the Notice of Discipline. The election of remedies must also be made prior to the submission of a request for a list of arbitrators and prior to scheduling a Civil Service Commission appeal hearing. As otherwise provided in this Agreement, for the matter to go to binding arbitration, the Organization must agree (i.e., must be the party taking the matter to arbitration).

CITY PROPOSAL – PERFORMANCE EVALUATION

City Proposed Language:

ARTICLE 46 PERFORMANCE EVALUATION

46.1 Key Element Review

If the employee formally receives an overall performance rating of “meets standards” or above, but receives below “meets standards” in an individual key rating, the employee may request a review of that individual key element by the Chief of Police or designee. The employee must submit a written request to the Chief of Police, or designee, specifying the reasons for the request within 30 calendar days from the date the employee received the final performance appraisal. The Chief of Police, or designee, shall investigate the request, arrange a meeting with the employee, and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Chief of Police, or designee, shall be final.

46.2 Overall Rating Appeal

If the employee formally receives an overall performance rating that is below “meets standards,” the employee may appeal the rating. Such appeal shall be made in writing to the Chief of Police, or designee, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Chief of Police, or designee, shall investigate the appeal, arrange a meeting, and provide a written response to the employee within thirty (30) calendar days of the receipt.

46.2.1 If the employee is dissatisfied with the decision of the Chief of Police, or designee, the employee may, within ten (10) calendar days from the Chief of Police’s or designee’s, response, request a meeting with the City Manager, or designee. Such request shall be made in writing and shall include the reason(s) the employee is not satisfied with the decision previously rendered.

46.2.2 The City Manager, or designee, shall hold a meeting within a reasonable time, and within ten (10) days of the hearing shall inform the employee of the decision. The decision of the City Manager, or designee, shall be final. This will be the only appeal process applicable to review the performance appraisal. The employee shall have the right to Organization representation at the meeting with the Chief of Police, or designee, or the City Manager, or designee.

46.3 Effective March 2022, the performance evaluation rating period will coincide with annual shift change.

CITY PROPOSAL– REHIRED RETIREE

City Proposed Language:

ARTICLE 60

60.1 ~~The City may establish a Rehired Retiree Program for the reemployment of Police retirees of the Police and Fire Department Retirement Plan to conduct background investigations and other duties. The POA and the City agree to meet and confer over any other duties for rehired retirees. This program shall be similar to the Rehired Retiree Program for the reemployment of retirees of the Federated City Employees' Retirement System as provided in City Administrative Policy Manual Section 3.1.5 and the San Jose Municipal Code, Part 9 of Chapter 3.28 of Title 3. The duties performed by employees in the Rehired Retiree Program for the reemployment of Police Retirees shall be determined by the Chief of Police or designee. Additional details related to the Rehired Retiree Program will be provided for in City Administrative Manual Section 3.1.5, Reemployment of Retirees.~~

CITY PROPOSAL – LATERAL OFFICER VACATION ACCRUAL RATE

City Proposed Language:

ARTICLE 30

30.5 Effective on or after the first pay period after Council approval in Open Session of a Tentative Agreement for a Successor Memorandum of Agreement (MOA) between the City and the POA, the City Manager or designee is authorized to adjust the annual vacation accrual of a Lateral Police Officer, for the purpose of hiring or re-hiring that Officer into City service. This action allows hiring managers to place new or rehired Lateral Police Officers with prior sworn public service credit at a vacation accrual rate commensurate with their total years of sworn public service with the approval of the City Manager or designee.

Process/Guidelines

A Lateral Police Officers' vacation accrual may be adjusted upon first hire or rehire date to provide the Officer with credit for previous sworn public service upon the approval of the City Manager or designee.

1. Credit for sworn public service shall only be given for completed years of sworn service as a full-time benefitted employee.
 - a) If an Officer worked at a public service agency on a part-time benefitted basis, completed years will be based on the completion of 2,080 hours.
 - b) For example, if an Officer has previously worked six (6) complete years in another public agency or a combination of sworn public service and sworn service with the City of San Jose, the City Manager or designee may authorize the Officer to accrue vacation at the 6-10 annual hourly rate, which is 120 hours per year. The below table illustrates the vacation annual hourly accrual rates by years of service in the POA MOA:

<u>Years of Service</u>	<u>Hours of Vacation Per 26 Pay Period Cycle</u>
<u>1st 5 years</u>	<u>80 hours</u>
<u>6th year – 10th year</u>	<u>120 hours</u>
<u>11th year – 12th year</u>	<u>140 hours</u>
<u>13th year – 14th year</u>	<u>160 hours</u>
<u>15th year or more</u>	<u>180 hours</u>

Vacation accrual caps shall apply to the designated annual hourly accrual rate.

2. Sworn Public service credit shall not apply to any other benefits.

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3. The Officer has the responsibility to prove certification of previous sworn public service from the Officer's previous employer(s), if so requested.
 - a. A public service agency may be defined as a(n) International Federal, State, City, County, Special District, or other publicly funded agency that provides programs, goods, or services. A public agency is not defined as a not-for-profit organization or non-governmental organization that relies on donations and volunteers to operate.

CITY PROPOSAL – COMPENSATORY TIME

ARTICLE 13

13.6.2 The outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each quarter in a calendar year. An employee may exceed the 240 limit during the year quarter but shall be responsible for bringing the balance back to the 240 hour maximum level by taking the time off prior to the end of the calendar yearquarter. This time off must be pre-approved by the supervisor.

13.6.2.1 Once an employee's compensatory time balance reaches 180 hours, all requested time off, other than for sick leave purposes, must be coded as compensatory time off, until the compensatory time balance is below 80 hours, at which point an employee may elect to use any available vacation leave or compensatory time.

~~13.6.2.1 In the event the outstanding amount of accrued compensatory time owed to an employee exceeds 480 hours, the employee will automatically receive payment for any hours in excess of 480 hours.~~

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

13.6.4 Except as provided in Section 13.6.5 below, overtime worked by the employee for compensatory time shall remain compensatory time to be taken, subject to provision 13.6.2 and 13.6.3 above, so long as the employee continues his/her employment in a classification represented by the Organization. Any employee whose employment is terminated by reason of resignation, discharge, or retirement, and who, at the time thereof has accrued unused compensatory time, shall be paid for such time at the appropriate rate. In the event of the death of an employee who has accrued unused compensatory time, the appropriate payment shall be made to the executor of the will, the administrator of the estate or other representative, as authorized by law.

13.6.5 Notwithstanding the provisions of section 13.6.4 above, the City shall have authority to require employees to immediately take time off to reduce the outstanding amount of accrued compensatory time off above the 240 hour maximum level, with the following exceptions:

13.6.5.1 If an employee is unable to reduce his/her comp-time balance to 240 hours by the end of the last pay period of the calendar yearquarter, ~~by December 1 of that year~~, an employee shall submit a written plan to his/her immediate supervisor outlining how the excess hours will be reduced. The plan shall be submitted by March 1, June 1, September 1, December 1, respectively. If the employee submits a plan by that date, the

employee shall receive a ~~ninety-thirty (3090)~~ day carryover ~~(to March 31 of the next calendar year)~~ of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance by ~~March 31~~the end of the 30 day carry over. While on the plan, the employee will be ineligible for any voluntary overtime assignments, unless the overtime is authorized for pay; authorization for paid overtime shall be consistent with Department policy.

~~13.6.5.2 If an employee's compensatory time balance is above the 240 maximum level at the end of the last pay period of the calendar year and the employee complied with the provision of subsection 13.6.5.1 above but earned additional compensatory time hours above those previously identified for a ninety (90) day carryover or the employee did not submit a carryover plan because his/her compensatory time balance was at or below the 240 maximum level at the time the carryover plan was due for submittal; the employee shall submit either an amended or new plan to his/her immediate supervisor by the end of the first pay period of the new calendar year outlining how the excess hours will be reduced. If the employee submits the amended or new plan within the specified timeline, the employee shall receive a ninety (90) day carryover (to March 31 of the new calendar year) of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance within the ninety (90) day time frame.~~

13.6.5.23 If emergency circumstances necessitate that an additional ~~sixty-thirty (3060)~~ days (beyond the limits set forth in provision 13.6.5.1) is needed for an employee to bring his/her compensatory time balance into compliance with provision 13.6.2, the employee shall submit a written request to the Chief of Police, again outlining the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance. The approval of this request shall be at the discretion of the Chief of Police.

13.6.5.34 ~~No employee shall be required to reduce his/her individual number of accrued hours of compensatory time below 240 hours without the approval of the individual employee. If at any time an employee's compensatory time balance reaches 300 hours, the City shall have authority to require employees to take immediate time off to the reduce the amount of accrued unused compensatory time. The employee will be ineligible for any voluntary overtime assignments, unless the overtime is authorized for pay. Authorization for paid overtime shall be consistent with Department policy.~~

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13.6.6 Supervisory approval or disapproval of compensatory time off shall be based on scheduling and staffing needs and not on an individual's reason for seeking to use the compensatory time.

13.6.7 The City reserves the right to buy down any employee's outstanding balance of compensatory time, subject to the provision of subsection 13.6.5.3. Such buy down shall be uniform, ~~by percentage,~~ as to all employees within a bureau.

13.6.7.1 When an employee promotes to a higher classification, the Department may elect to buy down the employee's available compensatory time at the employee's rate of pay in the lower classification at the time of the promotion.

13.6.8 In the event the outstanding amount of accrued compensatory time owed to an employee exceeds 480 hours, the employee will automatically receive payment for any hours in excess of 480 hours.

13.6.9 Employees who request to use sick leave will be ineligible to work any voluntary overtime assignments the day the sick leave is requested and the immediate day after. In the event that time is worked during this period the employee will receive pay at the 1.0 rate for any hours actually worked.

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CITY PROPOSAL– MODIFICATION OF BARGAINING UNIT WORK

City Proposed Language:

ARTICLE 51

51.1 The City ~~has~~ continues to have the discretion to contract out and/or civilianize the following ~~five-three~~ (35) positions during the term of this Agreement:

#	Position	Number
4	Deputy Chief – Bureau of Technical Services (BTS)	4
12	Bureau of Field Operations Administrative Positions (BFO)	2
23	Public Information Officers (PIOs)	1
4	Community Service Officers' Supervisor	4
Total		<u>35</u>

~~At the City's option, a non-sworn classification for a Police Cadet position may be created.~~

~~In addition to provision 51.2 below, the City and POA agree that during the term of this Agreement discussions will continue related to the contracting and/or civilianization of the following positions:~~

#	Position
1	Airport Police Officers
2	Helicopter Pilots
3	Shooting Range
4	Training Specialist

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The City and the POA further agree that during the term of this Agreement the City has the discretion to contract out/civilianize five (5) positions, in addition to the following three (3) positions listed below:

<u>#</u>	<u>Position</u>	<u>Number</u>
<u>1</u>	<u>Crime Evidence/Warehouse Officer</u>	<u>2</u>
<u>1</u>	<u>Reserve Unit Officer</u>	<u>1</u>
<u>Total</u>		<u>3</u>

51.151.2 Any contracting out and/or further civilianization of positions represented by the POA during the term of this Agreement would be subject to the meet and confer process. The City will provide advance notice to the POA and the opportunity to demand to meet and confer regarding contracting out and/or further civilianization of work currently performed by bargaining unit members.

