

## 2021 AMSP NEGOTIATIONS PACKAGE PROPOSAL A

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### TERM

- July 1, 2021 – June 30, 2023

### WAGES

- Fiscal Year 2021-2022

2% general wage increase effective the first full pay period in Fiscal Year 2021-2022 following union ratification and Council approval in open session. Effective the first full pay period in Fiscal Year 2021-2022 following union ratification and Council approval in open session, all salary ranges for employees holding positions in classifications assigned to AMSP shall be increased by approximately 2%.

- Fiscal Year 2022-2023

2% general wage increase effective the first full pay period of 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 AMSP shall be increased by approximately 2%.

### WAGES AND SPECIAL PAY

- Eligibility for Overtime (As proposed to AMSP on April 30, 2021)
- Bilingual Pay (Placeholder)

### LEAVES

- Absent Without Leave (As proposed to AMSP on April 16, 2021)
- Bereavement Leave (As proposed to AMSP on April 16, 2021)
- Personal Leave Proration (As proposed to AMSP on April 30, 2021)
- Family Leave (Placeholder)
- City Observed Holidays (Placeholder)

### BENEFITS

- Professional Development Program Proration (As proposed to AMSP on April 16, 2021)

### DISCIPLINE

- Disciplinary Appeals (As proposed to AMSP on April 16, 2021)

### CONTRACTING OUT

- Contracting Out (As counterproposed to AMSP on April 23, 2021)

### OTHER

- City Paid Union Release Time Code (As proposed to AMSP on April 16, 2021)
- Return to Work Safely (As counterproposed to AMSP on April 23, 2021)

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- Telecommute Program (As counterproposed to AMSP on April 23, 2021)

### **SIDE LETTERS**

- Reallocation Program (As counterproposed to AMSP on April 30, 2021)
- Management Performance Program (As counterproposed to AMSP on May 7, 2021)

### **OTHER TERMS**

*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 – ELIGIBILITY FOR OVERTIME**

City Proposed Language:

Effective two full pay periods following approval of tentative agreement by City Council in open session, all employees in classifications represented by AMSP shall be deemed salaried and shall no longer be eligible for overtime. Employees in classifications represented by AMSP shall no longer be eligible for additional compensation for hours worked in excess of forty (40) hours per week.

With this proposal and in becoming salaried, employees represented by AMSP will no longer be eligible to receive overtime for pay or compensatory time, call back pay, standby pay, or shift differential.

CITY PROPOSAL – ABSENT WITHOUT LEAVE

City Proposed Language:

8.9 Leaves of Absence

8.9.7 Any employee who is absent without notification to their Department Director, or other designated authority, for two (2) consecutive workdays, shall be considered a voluntary resignation, unless the failure to report is due to extenuating circumstances beyond the control of the employee. An employee will be considered to be absent without notification pursuant to this Section, if notification is not provided prior to the commencement of the second consecutive workday.

CITY PROPOSAL – BEREAVEMENT LEAVE

City Proposed Language:

8.6 Bereavement Leave Each full time or benefitted part-time employee shall be granted bereavement leave with full pay for up to forty (40) work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee’s spouse or employee’s domestic partner. All leave must be used within ~~fourteen (14)~~ thirty (30) calendar days following the death of an eligible person. Under extreme circumstances, the ~~fourteen (14)~~ thirty (30) 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.

- Parents/Step-parents
- Spouse/Domestic Partner
- Child/Step-child
- Brother/Sister; Step-brother/sister; Half-brother/sister
- Grandparents/Step-grandparents
- Great grandparents/Step-great grandparents
- Grandchildren
- Sister-in-law/Brother-in-law/Daughter-in-law/Son-in-law

8.6.1 A domestic partner, as referenced in Section 8.6, must be the domestic partner registered with the Department of Human Resources.

8.6.2 No eligible employee shall be granted bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

## 2021 CITY OF SAN JOSE – AMSP NEGOTIATIONS

### CITY PROPOSAL – PERSONAL LEAVE

City Proposed Language:

- 8.5 Personal Leave Each eligible full time employee is entitled to sixteen (16) hours of Personal Leave per payroll calendar year. Eligible employees hired on or after July 1<sup>st</sup> shall be entitled to eight (8) hours of Personal Leave in the first payroll calendar year of employment.

Part Time: Each benefitted part-time employee shall be entitled to eight (8) hours of Personal Leave per payroll calendar year. Eligible part-time employees hired on or after July 1 shall be entitled to four (4) hours of Personal Leave in the first payroll calendar year of employment.

Unused leave for both full-time and part-time employees does not carry over from year to year.

- 8.5.1 Effective the first pay period of payroll calendar year 2022, an employee on a reduced work week schedule will receive personal leave as indicated in the chart below, even if the actual hours worked exceed that amount.

<u>Scheduled Work Hours per Week</u>	<u>Benefit Level</u>	<u>Hours of Personal Leave</u>
<u>35-39.9 hours per week</u>	<u>100%</u>	<u>16 hours</u>
<u>30-34.9 hours per week</u>	<u>75%</u>	<u>12 hours</u>
<u>25-29.9 hours per week</u>	<u>62.5%</u>	<u>10 hours</u>
<u>20-24.9 hours per week</u>	<u>50%</u>	<u>8 hours</u>
<u>Less than 20 hours per week</u>	<u>Unbenefited</u>	<u>None</u>

- 8.5.2 Effective the first pay period of payroll calendar year 2022, an employee who is promoted into an AMSP-represented classification will have the number of Personal Leave hours they receive upon promotion reduced on an hour-for-hour basis based on their usage of Personal Leave and/or Executive Leave within the same payroll calendar year.

- 8.5.3 Effective the first pay period of payroll calendar year 2022, an employee who is demoted into an AMSP-represented classification will have the number of Personal Leave hours they receive upon demotion reduced on an hour-for-hour basis based on their usage of Executive Leave within the same payroll calendar year.

## 2021 CITY OF SAN JOSE – AMSP NEGOTIATIONS

### CITY PROPOSAL – PROFESSIONAL DEVELOPMENT PROGRAM

City Proposed Language:

11.7 Professional Development Program The City will reimburse each full-time employee 100% of eligible expenses incurred, up to \$1,000 per fiscal year, pursuant to the terms and conditions of the Professional Development Program for employees represented by AMSP, IFPTE, Local 21 as described in the City Policy Manual's Professional Development Program.

11.7.1 A total of \$500 (of the \$1,000 annual maximum) may be reimbursed for professional materials pursuant to the terms and conditions of the Professional Development Program for employees represented by AMSP, IFPTE, Local 21 as described in the City Policy Manual's Professional Development Program, provided that the materials relate to and are beneficial for the work of the employee's current City position or occupation or are required of the employee's current City position or occupation.

11.7.2 The City will reimburse each eligible part-time benefited employee one-hundred percent (100%) of expenses incurred, up to the maximum amounts per fiscal year listed below, pursuant to the terms and conditions of the Professional Development Program for employees represented by AMSP, IFPTE, Local 21 as described in the City Policy Manual's Professional Development Program.

<u>Scheduled Work Hours per Week</u>	<u>Maximum Reimbursement for Part-Time Benefited Employees</u>	<u>Maximum Reimbursement for Professional Materials</u>
<u>35-39.9 hours per week</u>	<u>\$1,000.00</u>	<u>\$500.00</u>
<u>30-34.9 hours per week</u>	<u>\$750.00</u>	<u>\$375.00</u>
<u>25-29.9 hours per week</u>	<u>\$625.00</u>	<u>\$312.50</u>
<u>20-24.9 hours per week</u>	<u>\$500.00</u>	<u>\$250.00</u>
<u>Less than 20 hours per week</u>	<u>\$0.00</u>	<u>\$0.00</u>

**CITY PROPOSAL – DISCIPLINARY ACTION**

City Proposed Language:

**ARTICLE 17 DISCIPLINARY ACTION**

17.1 The City of San Jose discipline policy is described in City Policy Manual, Section 2.1.3. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, demotion and dismissal.

17.2 The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City Policy Manual, Section 2.1.3.

17.2.1 Should an employee appeal a disciplinary action 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 Discipline. Nothing herein precludes the parties from settling the disciplinary matter by mutual agreement at any time.



## 2021 CITY OF SAN JOSE – AMSP NEGOTIATIONS

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### CITY COUNTERPROPOSAL – CONTRACTING OUT

City Proposed Language:

The City will continue to follow Article 19 in the current AMSP MOA which states the following:

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

The City will also continue to follow the process and guidelines provided in Council Policy 0-41 Service Delivery Evaluation, and Council Policy 0-29 Public Private Competition Policy.

Attachments:

Council Policy 0-41 Service Delivery Evaluation

Council Policy 0-29 Public Private Competition Policy

*City of San José, California*

**COUNCIL POLICY**

<b>TITLE</b> SERVICE DELIVERY EVALUATION	<b>PAGE</b> 1 of 4	<b>POLICY NUMBER</b> 0-41
<b>EFFECTIVE DATE</b> October 20, 2009	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>		October 20, 2009, Item 4.2(b), Res. No. 75137

**BACKGROUND**

The City is responsible for regularly reviewing services provided to residents to ensure service delivery is as cost effective as possible. An extraordinarily difficult economic climate and the City's responsible actions to address the structural budget deficit have generated particular interest and discussion on how such reviews are conducted and decisions made to change service delivery methods, particularly when outsourcing services. During this challenging period, the City has benefited from substantial reductions in the costs of services as a result of compensation concessions by its public employees. It is within this context that evaluations of service delivery resulting in contracted services, if and when cost effective, be undertaken.

Based upon City Council direction to review the City's competition policies, staff has worked with a group of stakeholders representing labor, business, and non-profit community interests. As a result of this consultation, staff has developed recommendations for a structured approach to evaluating and selecting among a variety of service delivery models. For the purpose of establishing a policy and consistency in practice, the term "Service Delivery Evaluation" is used here to broadly encompass the evaluation of a range of service providers, including City employees, non-profit organizations, private enterprises, or other governmental agencies for providing services to the Community on behalf of the City.

**PURPOSE**

The purpose of this policy is to provide a decision-making framework for evaluating a variety of service delivery models.

**POLICY**

It is the policy of the City of San José to use an efficient and transparent process for evaluating service delivery methods, which:

- applies consistent decision-making criteria;
- ensures that stakeholders have the opportunity to provide input to decisions; and,
- results in quality, cost effective services that leverage the unique strengths of public, private, and nonprofit sectors in service delivery.

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## **Implementation**

**Step 1.** Evaluations of existing service delivery may be undertaken at any time. The evaluations may result in changes among services currently provided in-house and those currently contracted out and new services. The City Manager shall consider recommendations for evaluations of existing service delivery from the City Council, City Attorney, City Auditor, department heads, bargaining unions, and the public and private sector. Concepts of service evaluations will be advanced prior to the formal annual budget process to the extent feasible, in order to maximize the opportunity to carefully consider the potential effects (positive and negative) of a proposed service delivery method change.

The City Manager will inform the Council early in the process of the service models undergoing a business case analysis. For proposals to be considered as part of the annual budget, Council will be informed no later than the “City Manager’s Budget Request and Five Year Forecast and Revenue Projections for the General Fund and the Capital Improvement Program” submitted each year in February. Formal decisions to proceed with a service delivery change may be made at the time of the annual budget adoption, in order to ensure that resources are allocated accordingly.

The implementation process described in this Policy will only be applied to projects that meet specific size thresholds. Smaller service delivery changes may proceed (as prescribed under other rules and policies) using elements of this process when appropriate, but will not require the extensive process described below:

1. For the purposes of this Policy, a business case analysis will be undertaken to evaluate Service Delivery changes that are expected to result in the addition, deletion, or reclassification of four (4) or more City full-time equivalent (FTE) positions.
2. This process will not be applied to service eliminations due to budget cuts, episodic, one-time, or temporary work.

**Step 2.** A business case analysis will be prepared to determine the full cost, including transition and management expenses, for the City to deliver an existing service differently.

**Step 3.** The business case analysis will be reviewed with stakeholders and made available to the general public. As applicable, the Administration will meet and confer with affected City employee bargaining units.

This review will provide a preliminary Administration recommendation on the service delivery approach to be pursued and the applicability of Council Policy 0-29, Public Private Competition Policy, based upon the following decision-making criteria:

1. What is the potential impact on public employees currently providing the service and on the workforce in general with respect to issues such as workload, productivity, diversity, and availability of measures to mitigate negative impacts? Impacts will specifically be evaluated relative to the City’s core values (Integrity \* Innovation \* Excellence \* Collaboration \* Respect \* Celebration).
2. Is it practical for City staff to provide the proposed service (versus being precluded by proprietary, supply chain, or other factors)?

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3. Is there limited market competition for the service or other reasons that the City directly providing the service would protect public interests from default or service interruption?
4. Is there currently a City staff unit capable of and interested in developing a managed competition proposal?
5. Is the workload sufficiently steady to support a permanent workforce (versus episodic)?
6. Is a City interest served by being a long term direct service provider, such as avoiding future costs?
7. Is the service model likely to improve the quality, customer satisfaction, and/or responsiveness for the same or lower cost, with particular focus on the General Fund?
8. Do local, state and federal laws, regulations, and funding guidelines restrict the method of service delivery, and if so can these restrictions be changed?
9. What risks to the City and public do the service delivery models present, and how would these risks be managed?
10. Is the City able to cost-effectively maintain the specialized skills, technology, and equipment needed for the service?
11. Does the service delivery model maximize the leveraging of prospective non-City resources (such as sponsorships and donations)?
12. Is there management and administrative capacity to support the in-house workforce or contract oversight needed?

**Step 4.** The decision to pursue changes to the existing service delivery model, including whether managed competition including City employees will be pursued, will be presented to the City Council for approval. This will include the allocation of resources (funding and personnel) to complete any required procurement process.

**Step 5.** The Administration will issue a request for proposal (or other procurement process) for service provider selection, managed competition, or other partnership agreements as applicable. The City's Public Private Competition Policy (Council Policy 0-29) will guide the managed competition process.

**Step 6.** The Administration will present for approval by the City Council results of the procurement process. In making its recommendations, the Administration will compare the proposed agreement to the business case analysis and either validate its preliminary recommendation or identify material differences. The Administration will consult with stakeholders in advance of presenting its recommendations to the City Council, including as applicable, meeting and conferring with affected City employee bargaining units.

**Step 7.** The City will monitor any resulting contract to ensure quality and ongoing cost competitiveness, with reporting and renewals consistent with other City rules and policies.

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## DEFINITIONS

**Service delivery evaluation** refers to the evaluation of a range of methods of delivering services to the public via City employees, non-profit organizations, private enterprises, or other governmental agencies for providing community services on behalf of the City.

**Managed Competition** refers to a process whereby City employees as well as other public and private entities may propose to deliver specific services over a specified period of time.

*City of San José, California*

**COUNCIL POLICY**

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<b>EFFECTIVE DATE</b> March 25, 1997	<b>REVISED DATE:</b> October 20, 2009	
<b>APPROVED BY COUNCIL ACTION</b> 3/25/1997, Item 9d; 10/20/2009, Item 4.2(b), Res. # 75137		

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**BACKGROUND**

Over the years, the role of government as a monopolistic provider of public services has evolved into a role as a partner with the private and non-profit sectors in the delivery of public services. Government has chosen to involve others in service delivery due to limited resources, increased demands, and to the recognition that partnerships can leverage the quality and cost-effectiveness of services delivered to the public. At the same time, government continues to deliver many services competitively in-house and also retains the responsibility for core services that require a certain level of government control and accountability.

With an overarching goal of providing quality services to the public in a cost-effective manner, the City of San José mirrors government-wide trends in service delivery. In addition, city employees continue to provide high quality, cost-effective services and to use Continuous Improvement practices to enhance the efficiency and cost-effectiveness of City services. Recognizing the value and quality performance of City employees, Council Policy 0-29 sets forth a preference for using City employees to deliver City services.

In San José and other government agencies, the delivery of public services by private firms has resulted typically from private competition processes, in recognition of the fact that competition challenges private firms to provide better services at lower costs. The current economic recession and the City's responsible actions to address the structural deficit necessitate that the City apply the concept of competition more broadly to determine the most cost-effective method for delivering City services. It is within this context that alternative service delivery options including subjecting services to a competition process in which, City employees themselves, are a competitor, if and when cost effective be considered.

In order to evaluate changes to existing models to deliver services, the City has developed a new Policy to provide a decision-making framework for evaluating a variety of service delivery models, such as City employees, non-profit organizations, private enterprises, or other governmental agencies to identify the most cost effective method for delivering quality public services (Service Delivery Evaluation Policy 0-41). If it is determined that managed competition involving City employees and private contractors will be pursued as a result of the evaluation, this policy will guide the competition process.

The underlying assumptions of this public-private competition process are that government should be competitive in cost and quality with the private sector and that competition provides an incentive to enhance quality and lower costs. To support the City's goal to deliver high quality services to the public in a cost-effective manner, San José seeks to update Council Policy 0-29

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to define the competition process once a service has been selected for competition, while continuing to retain the preference for City employees to deliver City services and other applicable services.

## **PURPOSE**

The purpose of this policy is to set forth the goals and guiding principles for the public-private competition process and guidelines for conducting a competition process.

## **POLICY**

### **Overview**

It is the policy of the City of San José to deliver quality services in the most cost-effective and efficient manner, within the context of other public policy goals and interests. In conjunction with Council Policy 0-41, Service Delivery Evaluation, the City shall use a public-private competition process to determine the most competitive service delivery method.

The public-private competition process shall consist of a competitive assessment (1) of the in-house service selected for competition prior to issuing requests for proposals (RFP) (2) and a managed competition process (3) during which RFPs are issued. In the competitive assessment, City employees providing the service shall be given an opportunity to implement readily achievable improvements, if necessary, prior to the decision to pursue managed competition. The City shall continue to deliver the service in-house if it is deemed competitive according to the measures set forth later in this policy. The public-private competition process shall be carried out in accordance with the goals and guiding principles set forth in this policy.

A glossary of key terms used in this policy is included in Attachment A.

### **Goals of Competition**

The overall goal of the competition process is to ensure competitive service delivery, regardless of which delivery method is selected ultimately. The goals of the competition process shall reflect the breadth of qualities necessary to be competitive and the broader public interest, rather than simply focus on costs. Accordingly, the goals of the competition process are to:

- Increase responsiveness to customers through flexible service delivery.
- Reduce costs and/or avoid costs.
- Increase efficiencies of service delivery.
- Improve and/or sustain quality and levels of service provided.
- Encourage creativity and innovation in the delivery of services.
- Identify opportunities to leverage resources.
- Ensure the City's mission and scope of services evolve with the changing environment.

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## GUIDING PRINCIPLES

The following principles shall guide the development and implementation of the public-private competition process.

**Application of Competition Process:** The premise of the public-private competition process is that competition in the marketplace produces value for customers and that either in-house or alternative service delivery methods may produce superior value for customers; therefore:

- The City may subject services that are currently provided in-house to the competition process.
- The City may subject services that are currently contracted out to the competition process.
- The City may also propose to provide services to other government agencies and, when it properly furthers an appropriate public purpose, and to the private sector.

The City shall continue to utilize Continuous Improvement practices to enhance in-house service delivery outside of this process. The City shall also continue to use the current private competitive procurement processes in which the City is not competing and/or other alternative delivery methods without utilizing the public-private competition process, in situations such as when the benefits to the City of alternative service delivery are clear and/or delivery of the service is time-sensitive.

**Employee Partnerships:** Fair and respectful treatment of employees shall be a cornerstone of the public-private competition process. To achieve the participation and acceptance of City employees, the City shall involve employees and unions (3) throughout the development and implementation of the public-private competition process. The City shall establish appropriate structures to ensure on-going participation of the employees and unions, including, but not limited to, labor and management teams.

**Employment Stability:** The City's commitment to employment stability for City employees affected by the public-private competition process shall be dependent upon employee and union commitment to flexible redistribution of resources, such as alternative career paths, broadened class specifications, and other measures to allow employees to assume greater and/or different responsibilities in a cost-effective manner.

**Consistency with City Policies, and Local, State and Federal Laws:** The implementation of the competition process shall be consistent with other City policies and public policy goals, such as the small and local business preference policy, prevailing and living wage policies, community employment standards, and the non-retaliation policy. Employees of private contractors will also have an obligation to meet the requirements of the State Whistleblower Protection Act, <http://www.bsa.ca.gov/hotline/protections>, and the City's Non-Retaliation Policy (Policy 1.1.4) <http://www.sanjoseca.gov/employeeRelations/fraudAudit.asp>.

Furthermore, state law requires that some contractors disclose potential conflicts of interest by filing a statement of economic interest (Form 700) (Political Reform Act under Government Code §§ 81000 et seq.).



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**Level Playing Field:** The competition process shall not favor or disadvantage any competitor in the process. The following principles shall apply:

- Request for Proposals (RFP) shall require competitors to provide prevailing wages (1) to their employees when it is deemed to be in the best interest of the City in obtaining the services requested.
- The RFP evaluation process shall include the “Third Tier Review” in accordance with the City’s Living Wage Policy. Specific for this policy Third Tier review shall also include the review of the City’s and contractors’ employee benefits, employee complaint procedures, compliance with state and federal workplace standards, and history of litigation related to breach of contract, or situations in which there is documented evidence of breach of contract. Information should be limited to information that is publicly available.
- Methods for comparing costs shall be reasonable and unambiguous, shall ensure objectivity and integrity of the data, and shall ensure that all direct and indirect (such as those costs which would be avoided if the service is not provided in-house) internal costs and gains associated with outside contracts are captured. Specifically it shall include: transition costs, monitoring and enforcement costs, effects on overhead costs, costs of training and equipment, and projections of future costs.
- Performance standards, deliverables, and corresponding payment schedules shall be outlined in the RFP and quality measures shall be reasonable, quantifiable and unambiguous. Based on the nature of the service contracted for, the RFP will include disclosure of relevant contractor employment standards such as training, screening, and personal background checks.
- Reasonable outreach efforts are to be made to secure a minimum of three proposals on RFPs. In instances where the outreach for a Request for Proposal results in less than three fully responsive proposals, the Administration will determine whether to proceed with the evaluation of the proposals. The Council report shall examine the situation to ascertain the reasons for the small number of responses.
- Contractors Records: All RFP’s conducted pursuant to this Policy and any contract and subcontracts resulting from such RFP’s shall have the following requirements with respect to public records:
  1. Keep and maintain records that ordinarily and necessarily would be required by the City in order to perform the service or activity.
  2. Provide public access to these records as identified in the RFP through requests to the City under the same terms and conditions that the City provides records and at the same cost.
  3. Include specific language in any RFP that identifies initial records to be kept. Any request for additional record keeping will be done on a yearly basis through review of the contract.
  4. Ensure that confidential and exempt records are not disclosed except as authorized by City ordinance or policy.

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**Internal Competitiveness:** The City shall make every reasonable effort to enhance the ability of employees to compete successfully on an on-going basis. Actions to accomplish this objective shall include:

- Continuing to utilize Continuous Improvement practices to enhance in-house effectiveness and efficiency on an on-going basis.
- Providing competitiveness training to employees and unions, through a collaborative effort to define needs and select trainers. Training shall include components such as unit cost accounting, development of performance standards, benchmarking, preparation of Requests for Proposals, preparation of proposals, and general business principles.
- Involving internal support functions in competitiveness training and in competition processes for which their operations are a cost factor.
- Removing internal barriers to competitiveness, such as outdated or unnecessary procurement, legal, personnel, financial and other operational procedures.
- Providing alternative rewards (e.g., gainsharing, bonus programs, etc.) for successful employee efforts to reduce service costs and enhance service quality.

**Competitive Assessment:** Reflecting the preference for in-house service delivery, the competition process shall begin with a competitive assessment of the in-house service function prior to issuing requests for proposals. City employees providing the service shall be given an opportunity to develop and implement readily achievable efficiency and effectiveness improvements prior to the decision to pursue managed competition. Efficiency and effectiveness improvements shall include actions affecting both line staff and management, such as reducing management layers balanced with broadening class specifications to encompass other responsibilities.

In general, the City shall continue to deliver the service in-house in those cases where effectiveness and efficiency is equivalent to or greater than alternative means and where the potential savings for an outside service delivery are less than ten percent (10%) for the same level of service provided in-house, which is the general percentage used in business to account for the cost of contract administration and basic transition costs. Based on the recommendation of the competitive assessment team, the City Manager shall decide if the service will remain in-house or be subjected to managed competition. The decision to keep a service in-house shall be subject to City Council approval.

In situations involving currently contracted-out services and new services, a similar process will be used to determine if the City can deliver the service competitively. In this situation, the assessment will be based on the expected costs of the City providing the service rather than the actual costs. The assessment should also take into consideration the abilities of service delivery models that can create and sustain partnerships that would leverage the quality and cost-effectiveness of services delivered to the public.

**Core Capacities and Resources:** As part of the decision-making process, the City shall consider the level of core capacities, if any, which should be maintained within the City to enable the City to compete for service delivery in the future and/or to provide the service in the

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event of a contractor default, changed circumstances, or future non-competitive proposals. Measures to maintain core capacities may include retaining a portion of the service in-house and/or maintaining comparable skills in other units of the City. Where City funds are invested in equipment, real property or other capital assets, the City shall identify appropriate measures to ensure the ability to resume operations in the case of default, changed circumstances, or future non-competitive proposals.

In recognition of the importance of the quality and responsiveness of services that protect public health and safety, core public safety services, including sworn police patrol, fire, and disaster response would not be subject to competition. This policy in no way prevents the augmentation of City services by contractors in the case of a disaster or state of emergency.

**Long-Term Competitiveness:** To ensure the delivery of competitive services to the public over the long-term, the City shall avoid actions that result in the creation of a “private monopoly” in which only one private firm is likely to be viewed as a tenable provider of a particular service. If the creation of a private monopoly is likely, the City shall consider contracting out only part of the service or not contracting out any of the service. The City shall also monitor contract costs over the long-term to ensure on-going cost competitiveness.

**Fair and Reasonable Process:** During the competition process, the City shall maintain high ethical standards and avoid any actual or perceived conflict of interest in selecting service providers. The City’s existing Code of Ethics (SJMC 16.46.010) and the Procurement Integrity and Conflict of Interest Policy (Council Policy 0-35) shall apply.

**APPROACH FOR PUBLIC-PRIVATE COMPETITION PROCESS**

Following is the general approach for conducting the public-private competition process.

Competitive Assessment (1)

1. Select service for competition and identify target dates for completion in Administrative Work Plan.
2. Conduct competitive assessment of in-house service.
3. Implement effectiveness and efficiency improvements as needed.
4. Determine next step based on competitiveness of in-house service.

Managed Competition Process (if decision is made to continue the competition process)

1. Develop Request for Proposal (RFP).
2. Issue RFP.
3. Conduct RFP process.
4. Select provider.
5. Conduct a financial analysis and risk assessment
6. Monitor performance and costs

<b>TITLE</b> PUBLIC PRIVATE COMPETITION POLICY	<b>PAGE</b> 7 of 10	<b>POLICY NUMBER</b> 0-29
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### Competition Training

The training plan will be a collaborative effort with employees as called for in the “Employee Partnerships” principle. The City may seek assistance from consulting firms with hands-on experience in preparing employees for competition. A general training module will be available to all City employees. Specific skills needed to successfully participate in the competition process will be provided to employees participating in the competition process. The general and specific training modules will focus on the following general areas; however the modules will be customized based on an assessment of employee training needs.

1. Introduction to competition to discuss the need to be more competitive in this changing environment as well as increased awareness of possible ethical conflicts during the competition process.
2. Benchmarking to assess where we are and what we need to do to improve.
3. Flowcharting the service delivery process to understand how the current process works.
4. Data collection methodologies to collect relevant information on costs, performance measures and customer satisfaction.
5. Continuous Improvement principles, tools, and techniques for streamlining work processes and implementing improvements.
6. Writing effective RFPs.
7. Responding to RFPs.
8. Identifying and implementing opportunities for improvement.
9. Contract development and management.

## **EMPLOYMENT OPTIONS**

### **Outside Contractor Employment**

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall facilitate the transition of employees to the successful contractor, if the contractor and the employees elect to pursue this option. Contractors are not required to hire displaced employees. Actions to facilitate the transition to private employment with the successful contractor shall include, but not be limited to:

Requiring outside contractors that create new jobs or have currently existing job vacancies to deliver a City service to first consider displaced city employees for new jobs.

Providing one-time incentives to employees that accept employment offers from the successful contractor.

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### **“No-Lay-Off” Provision”**

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall provide any person displaced with other employment opportunities within the City to totally avoid the need for lay-offs. Appropriate lay-off procedures under the Memorandum of Agreement or Civil Service Rules shall apply. When the “bumping” procedures are used, City employment will be offered to affected employees.

“No Lay-Off” means no separation from City employment, unless the employee is hired by the successful contractor or chooses lay-off in-lieu of internal placement. If the employee remains with the City, the employee will not experience a reduction in current pay, although the employee may be transferred, assigned to a different classification, have salary Y-rated, or have other opportunities for employment. The no lay-off provision shall not apply in situations other than reductions in positions resulting from the public-private competition process.

In addition to the obligations in the Civil Service Rules and the City’s Memoranda of Agreement, the City shall mitigate the impacts of the change in service delivery with actions including, but not limited to, the following:

- Notifying the unions, the Office of Employee Relations, and the Department of Human resources (HRD) of the impending competition process.
- Committing to full partnerships with the employees and unions and meeting and conferring with unions as the sole representative of the employees, as appropriate in accordance with state statute.
- Banking appropriate vacancies to prepare for the impending competition.
- Identifying opportunities for moving displaced personnel into other City positions with comparable benefits and salary levels without compromising current job standards.
- Assisting employees in transition by offering training and cross-training.
- In the event an affected employee elects not to accept a position within the City, the employee shall separate from City employment within 30 days and the City shall provide outplacement support services for the employee for 60 days following separation from the City.

### **Meet and Confer Provision**

For purposes of this policy, the meet and confer process shall incorporate the following principles:

- The process shall consider the competing interests of other stakeholders beyond the affected employees.

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- Flexibility in redistribution of resources is necessary to guarantee employment protection.
- The process shall attempt to coordinate solutions city-wide, not just in one bargaining unit.

(1) See Attachment A “Glossary” for definition of term

(2) Requests fro Qualifications (RFQs) and Requests for Information (RFI) may also be a apart of the managed competition process.

(3) “Unions” and “bargaining units” are used interchangeably throughout this policy.

**Attachment:**

A. Glossary of Terms

**ATTACHMENT A**  
**GLOSSARY OF TERMS**

The following definitions shall apply within this policy and to related actions:

**Service delivery evaluation** refers to an evaluation of a range of methods of delivering services to the public via City employees, non-profit organizations, private enterprises, or other governmental agencies for providing community services on behalf of the City.

**Competitive Assessment** refers to a process used to determine the competitiveness of in-house delivery of a particular service. A competitive assessment team conducts the assessment including identification of costs and performance measures, comparisons to industry standards, and development of benchmarks. The department providing the service subsequently implements readily achievable improvements in effectiveness and efficiency.

**Contracting out** refers to the City entering into an agreement with a private firm, governmental agency or non-profit organization, to manage a public program, provide a service or construct a public project with public funds.

**Managed Competition** refers to a process whereby City employees as well as other public and private entities may propose for the right to deliver specific services over a specified period of time.

**Prevailing Wage** refers to the California Labor Code definition, which defines prevailing wages as the basic hourly rate being paid to a majority of workers engaged in a particular classification within a given area. If there is no single rate being paid to the majority, then the prevailing wage is defined as the single rate being paid to the greatest number of workers in the given classification. Prevailing wage includes per diem payments for fringe benefits such as health, pension, vacation and travel time.

**Privatization** refers to a broad range of arrangements through which public services are delivered in whole or in part by the private sector.

**Public-private Competition** is a process whereby the City determines the optimum method for delivering public services. The process includes a competitive assessment of in-house delivery of the service. If the decision is made to issue a request for proposals, the city participates in a managed competition process. Public-private competition is distinguished from "private competition wherein the City is not a competitor.

**CITY PROPOSAL – CITY PAID UNION RELEASE TIME CODE**

City Proposed Language:

6.3 Release Time

6.3.1 Release time from regular City duties shall be provided to designated Union representatives in accordance with the following provisions.

6.3.2 Designated Union Representatives. The following designated Union Representatives shall be eligible for release time to attend meetings as listed in this Article.

6.3.2.1 Union President. The Union President or one (1) designated representative except where noted below, up to two (2) designated representatives shall be granted release time from regular City duties to attend the following meetings:

- 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 administrative grievance meetings when used to facilitate settling of administrative grievances.
- To attend Benefit Review Forum meetings (up to two (2) designated representatives.)
- To attend meetings scheduled by Administration when attendance is requested.
- To attend other meetings and trainings approved by the Director of Employee Relations, or designee.



6.3.3 City Paid Union Release Time: 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.

**CITY COUNTERPROPOSAL – RETURN TO WORK SAFELY**

City Proposed Language:

The City will continue to provide AMSP with advance notice on issues that are subject to the meet and confer process.

**CITY COUNTERPROPOSAL – TELECOMMUTE PROGRAM**

City Proposed Language:

The City will continue to follow the process and guidelines provided in City Policy Manual, Section 4.2.14, Flexible Workplace Policy. The City will provide advance notice of any changes to the Flexible Workplace Policy that are subject to the meet and confer process.

Attachment:

City Policy Manual, Section 4.2.14, Flexible Workplace Policy

**Flexible Workplace Policy****4.2.14****PURPOSE**

This policy contains guidelines for the City of San Jose's Flexible Workplace Program. The guidelines and requirements described in this policy are applicable to those City employees participating in the City's Flexible Workplace Program.

The Flexible Workplace Program is intended to:

- Increase productivity by allowing employees to spend less time commuting and more time on job duties
- Support employee work/life balance
- Reduce the workforce carbon footprint by allowing employees to reduce trips
- Decrease traffic congestion by allowing employees to travel during non-peak hours
- Increase employee job satisfaction
- Attract and retain employees
- Protect employee health and safety and reduce the risk of exposure to communicable disease, when necessary
- Allow for the continuity of government services in the event of an emergency

**POLICY**

The Flexible Workplace Program (FWP) allows employees to enter into an agreement to schedule portions of their work week away from their regular worksite. Participating employees would work a full workday, but the FWP allows times and number of hours in the office to be scheduled differently between individual days of the week.

An ongoing Flexible Workplace schedule (affecting one or more days a week) must be consistent, approved before it commences, and shall be combined with days and hours worked at the worksite. Under special circumstances or in the event of a declared emergency, employees who are able to work a majority or all of their scheduled hours remotely may be required to do so.

Employees, who occasionally work away from the office and not on a regular basis, can do so upon approval and will be compensated according to their applicable MOA. The FWP is not intended to discourage or supplant these infrequent and/or varied arrangements employees make with their supervisors.

The inability to enter into a Flexible Workplace agreement with an employee shall not be subject to the grievance procedure under the employee's applicable bargaining unit agreement.

The duties, obligations, responsibilities and conditions of a Flexible Workplace participant's employment with the City remain unchanged. The participating employee's salary, retirement, benefits and City-sponsored insurance coverage shall remain unchanged. Participants remain obligated to comply with all City, State and Federal rules, policies and practices, including the City's Code of Ethics. Flexible Workplace participants and their supervisors remain obligated to comply with all City of San Jose rules, regulations, policies, procedures, MOA provisions and the Fair Labor Standards Act (FLSA). The violation of any of the above or the misuse of City time or any City-provided equipment may result in preclusion from the FWP and/or disciplinary action, up to and including termination of employment.

**Flexible Workplace Policy****4.2.14**Eligibility

Current City employees must meet the eligibility criteria below in order to be considered eligible for the program, unless granted an exception by the Department Director or designee or in the event of a declared emergency and recovery period, during which the eligibility criteria below may be waived:

- Permanent Employee Status. (At department's discretion, an employee who is promoted in a flexibly staffed class who has been participating in the Flexible Workplace Program may continue to participate upon completion of a new agreement.)
- At least six months (1040 hours) of employment with the City of San Jose, and
- An overall rating of "Meets Standard" or higher on the most recent performance appraisal

Employees participating in the FWP must be able perform their job duties as productively off-site as they do at their designated worksite. Employees' participation in the FWP should also not lower the level of service delivery for the participant's work unit. Employees must have adequate internet and telecommunications capabilities to perform job requirements. Positions, especially ones that are chiefly focused on field work or that are directly customer facing, may not be compatible with the FWP. However, efforts should be made to evaluate whether a portion of an employee's work duties that are compatible to be done away from the designated work location can be scheduled as part of the FWP.

Flexible Workplace Approval

City employees may apply for the FWP by completing a Flexible Workplace Agreement and submitting it to the employee's supervisor.

The Flexible Workplace Agreement is a document that acknowledges a clear understanding of the roles and responsibilities between a participating employee and his/her supervisor. It must be signed by both parties prior to the start of the Flexible Workplace Program and renewed annually. The employee must also be granted Remote Access to participate. Please see [City Policy Manual Section 1.7.3, Remote Access](#), for more information.

Approval is granted when the Flexible Workplace Agreement is signed by the employee, the employee's supervisor, manager, and Department Director or designee. The Flexible Workplace Agreement expires one year after the effective date of the agreement, whichever occurs first. To renew the agreement, the participant's supervisor must evaluate the employee's performance on an annual or more frequent basis to ensure the appropriateness of the Flexible Workplace Program.

In the event of an emergency, Department Directors may determine that employees are required to perform all or some of their duties remotely. Employees are expected to abide by the FWP Policy and to any other specific written instructions provided by the City and their department.

**Flexible Workplace Policy****4.2.14**Termination of Participation

*The FWP is a cooperative effort between the employee and the department. It is not an entitlement.*

- The FWP is entirely voluntary and may be suspended or canceled by the employee or the City/Department at any time. Termination of participation in the FWP is administrative and the decision may not be subject to the grievance procedure or appealed.

Scheduling

The operational needs of the City take precedence over an employee's Flexible Workplace schedule. The Flexible Workplace schedule shall be governed by the following guidelines:

- The Flexible Workplace schedule occurs consistently. The specific schedule shall be specified in the Flexible Workplace Agreement.
- The Flexible Workplace schedule may consist of full workdays at an off-site location or portions of workdays in the regular worksite and at an off-site location.
- Flexible Workplace participants shall be as accessible as their on-site counterparts during their agreed upon regularly scheduled hours of work (i.e. FWP participants shall be available for phone calls and/or electronic communication within the hours specified in the Agreement and designated as the work schedule).
- Flexible Workplace Program participants are required to maintain communication (e.g. by phone, by email, etc) with their supervisors during the employee's regularly scheduled hours of work pursuant to the provisions of the Flexible Workplace Agreement.
- A FWP participant must agree to forgo working off-site if he or she is needed in the office or worksite on a day regularly scheduled for remote work. On any specific day, the employee should use good judgment on whether or not it is advisable to forgo off-site work in order to be at the main worksite. If the department deems it necessary that the employee be required to come to the main worksite on a scheduled off-site workday, the FWP participant should be notified no later than the start of the shift for which the supervisor would like the employee to report to the main worksite, if feasible. If such notice is given, the employee's worksite on that day will be the main worksite. However, supervisors should strive to provide as much notice as possible. During an emergency situation, the supervisor may require the employee to report to the main worksite immediately.

Flexible Workplace participants may be required to work beyond the customary 40 hours per week to ensure successful completion of job responsibilities. City policies regarding overtime pay and the application of Fair Labor Standards Act (FLSA) rules will also apply to employees participating in the FWP. For all hourly or FLSA non-exempt employees, overtime work must be preauthorized by the supervisor/manager.

**Flexible Workplace Policy****4.2.14**Time Accountability

Employees are responsible for promptly responding to their supervisor and teams during work hours. Where a message has been communicated as urgent, employees shall respond within 30 minutes. Employees are also responsible for reporting to a worksite as directed by their supervisor, manager, and/or Department Director as required to maintain City operations.

**The actual time worked by the employee, as established by the Flexible Workplace Agreement, must be accurately recorded on their timesheet. Fraudulent time reporting is subject to discipline, up to and including termination from City service.**

Work Environment

The Flexible Workplace participant's workstation is an extension of the City's workspace. Participants shall have a designated workspace approved by the City and maintained by the employee. This workspace must be maintained in a safe condition, free from hazards and other dangers to the employee and the work equipment. This workspace is subject to inspections, upon request, to ensure that safe work conditions exist. If the City has deemed that the employee requires a modified workstation in his or her main place of work, his or her home workstation must be similarly modified. The participant will be responsible for any cost related to remodeling and setup of the designated workspace.

Subject to approval by the Department Director, employees may take minor office equipment home, including computer peripherals and chairs. The employee must follow all department check-in and check-out procedures.

Phone Number

The employee may forward their City assigned phone number to an accessible phone while working away from their City workspace. If the employee has not forwarded their City assigned phone number to another number, the employee shall make a phone number available to City employees and customers as needed and shall check their City assigned phone number regularly for voicemails.

Equipment, Equipment Maintenance, Repair and Replacement

The participating employee is required to have installed and maintained at his/her own expense an Internet enabled device with Internet access and required applications, sufficient power/storage to run programs required for the employee to efficiently perform his/her job, and software necessary for completion of off-site job duties. An employee is also required to be available by phone or electronic communication during the hours of work specified in the Flexible Workplace Agreement. However, a department may decide to provide equipment and/or software to an employee who works at a Flexible Workplace location at least 60% of the time. If so, such equipment and/or software shall remain property of the City. The use of equipment, software, data, supplies and furniture, when provided by the City for use at the Flexible Workplace location, is limited to the employee and only for purposes relating to City business. When City equipment is provided, the employee is responsible for seeing that the equipment is properly used and secured. The City shall provide for repairs to City equipment unless the damage is due to the employee's negligence. When an employee is participating in

**Flexible Workplace Policy****4.2.14**

the FWP and uses his/her personal equipment, the employee is responsible for the maintenance and repair of the equipment.

Security Information is a valuable City asset and must be protected from unauthorized, incorrect or accidental access, use modification, destruction or disclosure. Flexible Workplace participants will be held accountable for securing information by taking reasonable and prudent measures to safeguard information on a routine basis in accordance with [City Policy Manual Section 1.7.6, the Information Security Policy](#). Flexible Workplace participants shall store City files in a secured space while working off-site. Please see [City Policy Manual Section 1.7.3, Remote Access](#), for more information.

### Expenses

The following are guidelines governing expenses for participating employees:

- Unless otherwise indicated by the department, expenses for long distance calls made out of the designated office location shall be the responsibility of the employee. Out-of-pocket expenses for supplies shall not be reimbursed unless prior approval by the Department Director or designee is obtained.
- All Internet related expenses shall be the responsibility of the employee.
- Individual tax implications related to home workspace modifications shall be the responsibility of the employee.

An employee's expenses not specifically covered in this policy must be pre-approved by the employee's department.

Employees accessing the City's network must follow the guidelines set forth in [City Policy Manual Section 1.7.1, Use of E-Mail, Internet Services, and other Electronic Media](#).

### Worker's Compensation

FWP participants are covered under the City's Workers' Compensation Insurance Program. Since the employee's satellite workspace shall be considered an extension of the City's workspace, the City's Workers' Compensation liability for job related accidents or injuries shall continue to exist during the *employee's Flexible Workplace Program work hours*. The employee remains liable for injuries to third party persons and/or members of the employee's family on employee's premises. Any injury or illness that may be related to work-related activities should be immediately reported by the employee to their supervisor so that Workers' Compensation can determine compensability.

### Safety Requirements

The City/Department may require that a supervisor or appropriate person conduct a safety inspection of the Flexible Workplace participant's home or satellite office. Employees are encouraged to watch the City's safety, hygiene, and ergonomics training videos to ensure that their flexible workspace is properly set up.

All vendors or outside individual visits must be approved by the City/Department Director or designee prior to conducting City business at the employee's home or satellite office.



**Flexible Workplace Policy****4.2.14**Monitoring and Evaluation

Productivity needs to be measured to ensure that the FWP is achieving its objectives to increase or maintain employee productivity, reduce carbon emissions, support work/life balance, increase job satisfaction, and retain and attract employees. Since not every task can be quantifiably measured, the supervisor should establish clear expectations and guidelines.

All employees participating in the FWP shall participate in all studies, inquiries, reports and analyses, including an annual survey, relating to the program for the City. While the employee's individual responses will not be published, the data may be compiled and made available to the public without identification of employees.

In addition, each department will designate a representative to coordinate the participation in the FWP within their respective department. This representative will be responsible for their department's program evaluation such as monitoring changes in employee retention and absenteeism, changes in required parking spaces, and reports of employee productivity. The Office of Employee Relations will serve as the designated record keeper of Citywide participation in the FWP.

**PROCEDURES**

The following procedure applies to all requests for participation in the FWP:

<b><u>Responsibility</u></b>	<b><u>Action</u></b>
Employee/Supervisor	1. Jointly fill out the Flexible Workplace Agreement.
Supervisor, Manager, and Department Director	2. Review the Agreement and provide signature, if approved. Engage in conversation with employee if not approved.
Employee	3. Submit Remote Access request forms for approval to IT Department (See <a href="#">City Policy Manual Section 1.7.3, Remote Access</a> ) and Agreement to the Office of Employee Relations. Inform OER if employee cancels Flexible Workplace Program.
Office of Employee Relations	4. Document Agreement and maintain records of employee participation, including cancellation.

**Flexible Workplace Policy**

**4.2.14**

Approved:

          /s/ Jennifer Schembri            
Director of Employee Relations  
Director of Human Resources

          July 22, 2020            
Date

Approved for posting:

          /s/ Jennifer Maguire            
Assistant City Manager

          July 22, 2020            
Date

# Flexible Workplace Policy

4.2.14

## Flexible Workplace Schedule

Name (Last, First, MI)	Department/Division
------------------------	---------------------

### Flexible Workplace Schedule is as Follows:

	Sun	Mon	Tues	Weds	Thur	Fri	Sat	Total:
Time Periods Working Remotely								
Time Periods at the Office								

### Eligibility Criteria

Check all that apply:

- Permanent employee status in current classification
- At least six months (1,040 hours) of employment with the City
- An overall rating of satisfactory or higher on my most recent performance appraisal

OR:

A declared emergency (completion of the form is generally waived for this reason, but may be required at a Department Director's discretion)

**Opportunity Fit Assessment:** The fit assessment is comprised of components that may be considered by your supervisor to determine if you are a fit for the Flexible Workplace Program.

	Yes	No
Are your job duties independent in nature, not requiring frequent face-to-face interaction with supervisors, colleagues, clients, or the public?	_____	_____
Are your job duties primarily knowledge-based, involving handling of information such as reading, writing, and editing; policy development; research or investigation; data analysis, program analysis, financial analysis, etc.; writing reports; or computer-oriented tasks?	_____	_____
Does your position regularly require your immediate presence or attendance at work to address unscheduled events?	_____	_____
Does your position predominantly include job duties that require you to access City databases or programs that are not available remotely?	_____	_____
Will there be sufficient staff present during your remote work times to cover front-facing services in the event of coworkers' unexpected sick days or approved vacation time?	_____	_____
I have completed City training for safety/hygiene and ergonomics.	_____	_____

# Flexible Workplace Policy

4.2.14

Employees must perform their work duties as productively off-site as they do their designated work site. What duties are you able to complete remotely?

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How will your remote work schedule impact the public, other staff, or work in your unit?

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If you are a supervisor; how will you manage your unit remotely?

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During an emergency, you may be asked to report to your work site immediately. Approximately how long would it take you to travel from your remote work site to your designated work site? \_\_\_\_\_

### Communication

In the first three (3) months of an employee’s participation in the Flexible Workplace Program, an Assignment Tracker Form must be submitted daily to the employee’s supervisor via email (or any other means mutually agreed to by the supervisor and employee).

In addition to the above, while working remotely as part of the Flexible Workplace Program, the participating employee shall communicate with \_\_\_\_\_ (specify to whom) in the office \_\_\_\_\_ (describe frequency and time(s)) by phone or email . Phone messages sent to the employee’s office phone are to be checked \_\_\_\_\_ (describe frequency, i.e., 2x/day and/or times, i.e., at 8am, 12pm, & 4pm).

The participating employee can be reached at the following phone number during scheduled remote work hours \_\_\_\_\_.

### Acknowledgement of Understanding

I have read and understand the City of San Jose’s Flexible Workplace Policy, a copy of which is attached. I understand that in participating in the Flexible Workplace all remote work hours must be pre-approved. I understand the responsibilities and obligations of Flexible Workplace participants that are expressed in these documents. I realize they are in addition to my normal duties, obligations and responsibilities. I understand that, at a minimum, I am responsible for the following:

- Obtaining approval prior to beginning any remote work associated with the Flexible Workplace
- Obtaining Remote Access approval and set up for internet enabled device
- Establishing a regular schedule
- Maintaining my work space while working remotely in a safe manner according to City standards
- Employing appropriate security measures and protecting City assets and information
- Use of City tools and City equipment solely for City business
- Ensuring that my work station meets any special requirements (i.e. ergonomically correct)

# Flexible Workplace Policy

4.2.14

I also understand that I will be exclusively working on official City business during my remote week schedule.

This Agreement will run a maximum of one year from \_\_\_\_\_ to \_\_\_\_\_  
(specific start and end dates required), or until, with periodic evaluations every \_\_\_\_\_ weeks months .

**For Supervisor to Fill Out:**

The following is a list of meetings/events that the employee must attend at the regular work site, regardless of whether they occur during regularly scheduled remote work days/times (e.g., staff meetings status meetings, etc.):

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List here any known additional conditions (if any), for approving the participating employee’s request.

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I understand that the Flexible Workplace Program is voluntary and may be terminated by either the employee or the City at any time. I further understand that the City may, at any time, change any or all of the conditions under which approval to participate in the Flexible Workplace Program is granted or cancel the Flexible Workplace Program agreement.

Employee	Signature	Date
Supervisor	Signature	Date
Program/Division Manager	Signature	Date
Department Director or Designee	Signature	Date

Submit the completed form to the Office of Employee Relations.

Employees should make a copy for their records.

For questions regarding the Flexible Workplace Program:  
Office of Employee Relations  
[Employee.relations@sanjoseca.gov](mailto:Employee.relations@sanjoseca.gov)  
(408) 535-8150

**Side Letter Agreement**

BETWEEN  
THE CITY OF SAN JOSE  
And

THE ASSOCIATION OF ENGINEERS AND ARCHITECTS (AEA) IFPTE, Local 21  
ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL (AMSP), IFPTE, Local 21  
CITY ASSOCIATION OF MANAGEMENT PERSONNEL (CAMP), IFPTE, Local 21

**POSITION REALLOCATION REQUEST PROCESS**

The parties agree that San Jose Municipal Code 3.04.540 provides that the Director of Human Resources has the authority to determine if a Reallocation Program should be in place at any given time and may establish procedures for allowing an individual employee to request reallocation of their position, if it is determined by the Director of Human Resources that providing a means for individual employees' job classifications to be reviewed and changed, if appropriate, is beneficial to the quality of the City of San Jose's employment systems.

The Director of Human Resources will review any reallocation requests on a case by case basis, provided that such request is (1) made directly by the Department Director or the Union, (2) is based on extenuating circumstances, and (3) is supported by the Department Director. Any such requests should be made prior to the submission of the Position Reallocation Request Form.

The Director of Human Resources will analyze relevant job information and approve or deny the Department Director and/or Union's request to review the reallocation. If the review request is approved, the Department may then submit the Position Reallocation Request Form to Human Resources for processing. Approval to review a position reallocation request does not guarantee approval of the request itself.

The parties agree that this Agreement shall not serve as precedent for future agreements and this Agreement shall not be construed or implied to obligate the parties to enter into any similar agreements in the future. This Agreement is considered part of a tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council, and is effective only during the term of the successor MOA.

FOR THE CITY:

FOR THE UNION:

\_\_\_\_\_  
Jennifer Schembri                      Date  
Director of Employee Relations  
Director of Human Resources

\_\_\_\_\_  
Matt Mason                                      Date  
Business Representative, IFPTE, Local 21

\_\_\_\_\_  
Florin LaPustea                                      Date  
AEA President, IFPTE, Local 21

\_\_\_\_\_  
Jesse Perez    Date  
AMSP President, IFPTE, Local 21

\_\_\_\_\_  
Olympia Williams                                      Date  
CAMP President, IFPTE, Local 21

## **2021 CITY OF SAN JOSE – AMSP NEGOTIATIONS**

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### **CITY COUNTERPROPOSAL – MANAGEMENT PERFORMANCE PROGRAM**

City Proposed Language:

The City will make the attached changes to the Management Performance Program policy.

Attachment:

City Policy Manual 3.3.2 Management Performance Program

# Management Performance Program

**3.3.2**

## PURPOSE

The Management Performance Program (MPP) is intended to: (1) increase the accountability of City Management employees by ensuring that their job performance is evaluated at least annually, and (2) reinforce and recognize job performance results that exceed pre-established targets and expectations.

## AUTHORITY

San Jose Council Resolution #51870 (October 10, 2001) establishes the manner in which management employees are compensated within their respective salary ranges, based on annual evaluations of job performance, and describes the basic rules for the administration of the MPP.

San Jose Municipal Code, Section 3.04.1700 states that the Director of Human Resources, in cooperation with the Appointing Authority, shall establish and maintain a method of rating the performance of employees in the classified service and that ratings shall be done not less than annually.

## POLICY

### 1. Annual Evaluations.

The job performance of each management employee shall be evaluated at least annually and this evaluation shall be used to determine the employee's rate of compensation within the salary range established for his/her job class.

### 2. Scope of Coverage.

The MPP applies to employees in positions defined as management (Unit 99—Executive Management and employees represented by AEA, AMSP, CAMP), except for employees in Temporary Unclassified positions and Council Appointees. Also, certain provisions of the MPP do not apply to management employees in the offices of the City Attorney or City Auditor, and these are specified in Section 4A of Council Resolution #51870.

### 3. Appraisal Periods.

The appraisal period for a management employee generally begins the first day of appointment to the management position and ends upon completion of the employee's probationary period.

(Please note that unclassified and temporary employees do not serve a probationary period since they are "at-will" employees. "At-will" employees should be evaluated after completing six months of full time service and annually thereafter consistent with other MPP employees.) After an employee completes probation, or has completed six months of service, the appraisal period corresponds to the City's fiscal year, July 1 through June 30. In the case where an employee has been supervised by more than one supervisor during the MPP rating period, the prior supervisor's input should be sought and considered in the current supervisor's evaluation of the employee. An exception to this is a special appraisal, which may be given at any time to communicate marginal or unsatisfactory performance. A special appraisal covers the period from the time of the last



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review to the designated special appraisal date. An employee shall be provided notice that they are going to receive a special appraisal, ideally when they receive an appraisal that warrants a special appraisal.

### 4. Switch from Initial Review to Annual Schedule.

Since management employees' appraisal dates convert after completing probation (or for "at-will" employees after six months), to a common annual date in July, there will usually be one appraisal cycle for each individual where the appraisal period will be more, or less than twelve (12) months. Employees whose initial review occurs in January through June, and who receive a salary increase at the end of this period, shall not be eligible for an additional salary increase until the following appraisal year. Consequently, because of the conversion, they will have an appraisal period of thirteen (13) to eighteen (18) months.

Employees whose initial review occurs sometime in the first half of the appraisal year—July through December will be included in the next annual appraisal (the following July). Therefore, because of the conversion, they will have an appraisal period of six (6) to eleven (11) months.

### 5. Rating Criteria and MPP Form.

There are 5 "Key Elements" for the MPP employees. The MPP form should be used to document the appraisal results, with supplemental narrative and information attached. Employees should be made aware of performance issues throughout the rating period and not just upon receipt of an appraisal. Relevant conversations or counselings should be cited in the appraisal.

The "Accomplishments" portion of the form should be used to describe specific goals and objectives that were established at the beginning of the appraisal period. These should directly relate to the Key Elements and the resulting performance ratings for each.

The "Achievement Plan" should document specific goals for the next appraisal period. It should be developed jointly by the manager and the MPP employee. The Achievement Plan should be described in terms of anticipated results. This is an opportunity to focus incorporating the corporate priorities (or the portions that apply) into the organization's way of doing business.

### 6. Management Pay Structure.

MPP job classes represented by AMSP, CAMP, AEA and classes in Executive Management—Unit 99 are in open ranges and do not have steps.

### 7. Annual Appraisal Salary Changes.

There are no automatic step increases in the MPP. For MPP classifications, the annual performance appraisal may include recommendations for merit increases up to the top of their salary ranges.

During the Fall of each year, the City Manager will provide guidelines for the types of salary changes that are typically appropriate for annual appraisal salary changes, corresponding to the overall performance rating.

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Movement within the range is based on the overall performance appraisal rating.

Salary changes recommended through the annual appraisal process are effective at the beginning of the first pay period of the fiscal year, which typically falls around July 1.

#### 8. Additional Executive Leave.

All participants in the annual appraisal process, and those probationary employees who served in an MPP job in a different class for the appraisal year, may be eligible for additional executive leave. Additional executive leave may be considered when the employee has received a particular rating. During the Fall of each year, the City Manager will provide guidelines for the additional executive leave, corresponding to the overall performance rating.

The following rules apply for additional executive leave:

- From one to five days may be awarded. For employees in Units 99 (Executive Management), CAMP, and AEA, this is in addition to the currently authorized five (5) days, for a maximum possible of ten (10) days. For employees in AMSP, five (5) days is the maximum possible.
- Employees who receive additional executive leave may also receive performance pay increases, if warranted.
- Executive leave is tracked (through PeopleSoft) on a calendar year basis, so additional executive leave approved through the annual performance appraisal process in July, will not be credited and available to use until the next calendar year, beginning in January.

#### 9. Follow-up Performance Appraisal.

A management employee who receives an overall rating of "Improvement Needed" as a result of a performance appraisal should be given a follow-up performance appraisal 120 days after the initial evaluation. The supervisor and employee should have a discussion about what is necessary to improve the rating. The purpose of the follow-up appraisal is to encourage performance improvement and assess the level of improvement that occurred in the intervening time period.

#### 10. Evaluation Appeals.

If a management employee with permanent status (not provisional or probationary) receives an overall rating of "Improvement Needed," the employee may appeal the decision by first, requesting in writing, a hearing with the department head, within ten (10) calendar days after receiving the evaluation. The Department Director will conduct the hearing with the employee within twenty (20) calendar days after receiving the request to hear the employee's concerns. The Department Director will render a written decision on the appeal within five calendar days of the hearing.

If the decision of the Department Director is not satisfactory to the employee, he or she may file a further appeal in writing to the appropriate Appointing Authority, within ten (10) calendar days after receiving notification from the Department Director. This appeal request should include a statement describing the reasons for the appeal. The Appointing Authority shall review the

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statement from the employee, make a final decision and inform the employee in writing within thirty (30) days from receipt of the appeal.

**PROCEDURES**

- |                     |   |
|---------------------|---|
| Supervisors         | 1. Discuss performance rating criteria and process with management employee at the beginning of the appraisal period.   |
| Supervisors         | 2. Complete performance appraisal at the end of probation period and submit to Human Resources.   |
| Human Resources     | 3. Provide Department Director with information and timelines for the annual appraisal process.   |
| Department Director | 4. Communicate instructions to supervisors on the annual appraisal process and timelines.   |
| Supervisors         | 5. Prepare performance appraisals and submit recommended awards to Department Director.   |
| Department Director | 6. Determine the performance pay and executive leave recommendations for the department and submit recommendations to the Director of Human Resources.                                |
| Supervisors         | 7. Conduct performance appraisal discussions and communicate any pay or executive leave changes to the management employees. Discuss Achievement Plans for the next appraisal period. |
| Human Resources     | 8. Review recommendations for compliance with City Manager guidelines.  |
| Department Director | 9. Send the MPP performance reports and the record of approved pay and executive leave changes to the Human Resources Department.   |
| Human Resources     | 10. Ensure implementation of all changes through Payroll changes and documentation in employee personnel files.   |

Approved:

**Management Performance Program**

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DRAFT

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Director of Employee Relations  
Director of Human Resources

DRAFT

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Date

DRAFT

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Assistant City Manager

DRAFT

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Date