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Memorandum of Agreement

City of San José

and

San José Police Officers' Association



March 1, 2004 – June 30, 2008

**CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION
MEMORANDUM OF AGREEMENT**

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The Memorandum of Agreement hereinafter referred to as the "Agreement" is established by agreement at San Jose, California, this **7th day of December, 2005** by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the San Jose Police Officers' Association, hereinafter referred to as the "Employee Organization" or "Organization". The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown Act."

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding wages, hours and other terms and conditions of employment of the employees represented by the San Jose Police Officers' Association.

ARTICLE 1 TERM

1.1 This Memorandum of Understanding (hereinafter, "Agreement") shall become effective March 1, 2004, except where otherwise provided, and shall remain in effect through June 30, 2008. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

1.2 This agreement is premised on the parties' mutual belief that they have the power to independently contract for retirement benefit changes, even if those retirement benefit changes differ from those eventually negotiated or awarded to employees exclusively represented by IAFF, Local 230. In the event that the parties are required to participate in a separate "tripartite" arbitration process covering retirement benefits during the term of this MOA, the parties agree as follows:

(a) If the POA and IAFF, Local 230 are required to make a "Joint Proposal":

- 1) The POA will not agree to make any "Joint Proposal" that includes any benefit change other than the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006; and
- 2) The City's proposal will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006.

(b) If the POA and IAFF, Local 230 are permitted to make separate proposals and be awarded separate benefits and the City is permitted to make separate proposals to POA and IAFF, Local 230:

- 1) The POA's proposal will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006; and
- 2) The City's proposal to POA will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006. This provision is not intended to limit the City's ability to make different proposals to IAFF, Local 230.

In the event that neither of the foregoing occur, the parties will meet and confer over how to proceed and will not proceed to a "tripartite" arbitration process covering retirement benefits until they have reached an agreement regarding how to proceed.

ARTICLE 2 RECOGNITION

Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the San Jose Police Officers' Association, hereinafter referred to as the "Employee Organization" or "Organization", is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the following classifications:

Unit 011: Police Officer, Police Sergeant, Police Lieutenant, Police Artist

Unit 012: Police Captain, Deputy Chief of Police

Unit 013: Airport Police Officer

Unit 014: Police Recruit

ARTICLE 3 COMMENCEMENT OF NEGOTIATIONS

It is mutually agreed that the first meeting of the parties will be held no later than twenty (20) calendar days after the City or Association receives notice from the other, which may be any date after February 28 of the year in which the current contract terminates.

ARTICLE 4 DEFINITIONS

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

ARTICLE 5 WAGES AND PREMIUM PAY

5.1 Maintain current salaries in effect as of February 29, 2004 through July 2, 2005.

Effective July 3, 2005 all persons represented by the POA shall receive a wage increase of 1.5%.

Effective July 2, 2006 all persons represented by the POA shall receive a wage increase of 5.7%.

Effective July 1, 2007 all persons represented by the POA shall receive a wage increase of 5.7%.

5.2 Premium Pay

Compensation for the benefits referenced below, shall be calculated from the eligible employee's base rate. In the event that an employee is eligible for more than one such benefit, compensation for each shall be separately calculated from the base rate and shall not be compounded.

5.2.1 Bomb Squad

Each employee regularly assigned to the "Bomb Squad" on a full-time basis and who is responsible for disarming bombs and similarly fused explosive devices shall be paid an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment.

5.2.2 Canine Officers

5.2.2.1 Each employee in the classification of Police Officer, Police Sergeant, and Police Lieutenant who is assigned to the duty of feeding, caring for and supervising police dogs, which duty is performed by the employee at his/her home and during hours when he/she is otherwise not on duty with the Police Department, and to each employee in the classification of Police Sergeant who is assigned the duties of coordinating the BFO Canine Unit, shall be paid an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment.

5.2.2.2 Such additional compensation shall not be paid for any biweekly period or portion thereof when such additional duty is not performed by the employee, whether for the

reason that the dog assigned to such employee is boarded at the kennel at City expense or otherwise.

5.2.2.3 This additional compensation is granted in recognition of the personal monetary investment, duties and responsibilities of the K-9 assignment including the time spent by the unit employee while on or off duty in the care and maintenance of the assigned canine. This extra compensation is not to be considered premium pay. The City shall pay costs associated with the "Initial Basic Training of Handler and K-9" when an officer is assigned to canine duty.

5.2.3 Motorcycle Duty Pay

Each employee in the classification of Police Officer, Police Sergeant, and Police Lieutenant who is assigned to duty that customarily requires the employee to ride a two-wheel motorcycle during all or a portion of the hours when he/she is on duty with the Police Department, shall be paid an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment, in addition to the salary fixed and established for said class title and number.

Such additional compensation shall not be paid to any person for any biweekly pay period during which the employee is assigned to said duty for less than one-half (1/2) of the working days of the employee in such biweekly pay period.

5.2.4 Training Officer Duty Pay

Each employee in the classification of Police Officer or Police Sergeant, who is assigned by the Chief of Police to perform, and does perform, the duties of a Training Officer shall receive an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment, in addition to the salary fixed and established for said class title and number.

5.2.4.1 An employee who is assigned by the Chief of Police on a temporary basis to perform Training Officer duties, shall receive an amount equivalent to a one-step increase under the biweekly pay plan for all hours actually worked performing such duties.

5.2.5 MERGE Unit

Each employee in the classification of Police Officer, Police Sergeant, and Police Lieutenant, who is regularly assigned to the Mobile Emergency Response Group & Equipment, shall be paid an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment.

5.2.6 Premium Pay While on Disability Leave

An Officer in a premium pay status referred to in Section 5.2.1, 5.2.3, or 5.2.5 above, shall not lose such premium pay while off on job-related disability leave. However, once the Officer is capable of returning to work, but in a job assignment not having a premium pay status, he/she shall no longer be entitled to such premium pay. However, such Officer shall have the right to return to the previous pay status, at the first available opening in the assignment he/she left, once such Officer is available to return to such position. An Officer wrongfully refusing to take such "light duty" (non-premium pay) assignment may also be denied the premium pay by the City. Prior to ending the premium pay status of an employee wrongfully refusing to accept a light duty assignment, the City shall inform the Organization and give the Organization an opportunity to communicate with such employee.

5.2.7 Mounted Unit

The City shall provide feed for the horses in the mounted unit, as well as the shoes and shoeing for the horses.

5.2.8 Air Surveillance Unit

Employees assigned to the air surveillance unit shall be entitled to standby pay when ordered to stand by. Each employee when assigned to the Air Surveillance Unit shall be covered by a City provided \$250,000 life insurance policy, which shall cover aerial photography and aerial surveillance.

5.2.9 Bilingual Pay

Each full time employee who meets the eligibility requirements set forth herein shall be compensated at the rate of \$29.00 per biweekly pay period for each pay period actually worked.

5.2.9.1 The employee is or was selectively certified for a position which has been approved by the Director of Employee

Services for selective certification based on Spanish-English bilingual ability or Vietnamese-English bilingual ability and is currently assigned to such position, or

- 5.2.9.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of Spanish and/or Vietnamese on a regular basis, to be determined and approved by the Director of Employee Services.
- 5.2.9.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the Organization.
- 5.2.9.4 If the Chief of Police determines that another foreign language is required in his/her department subject to the above criteria, he/she may recommend that the employee receive bilingual pay.
- 5.2.9.5 In the event an eligible employee is on a leave of absence, with or without compensation, for a period of one full pay period, the appropriate reduction in the above-mentioned compensation shall be made.

5.2.10 Anti-Terrorist Training Pay

- 5.2.10.1 Each employee assigned to classifications represented under this Memorandum of Agreement who on an annual basis successfully completes the annual training offered by the Police Department in Police Anti-Terrorist Tactics shall be paid, for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this agreement, additional compensation equal to five (5%) percent of the employee's base pay. Each eligible employee must certify annually, every September 1, by the Police Department as having successfully completed the annual training in order to be eligible to continue to receive the pay. The incentive pay will begin the first day of the pay period following the date the Police Department submits certification to the City's Finance Department for the employees who have successfully completed the training. Employees will not be eligible for this premium until such time he/she successfully completes the annual training and submits verification to the Finance

Department. No overtime compensation per Article 13.6 shall be provided for Officers' completion of this training.

5.2.10.2 This incentive pay shall be pensionable.

5.2.10.3 The five (5%) percent incentive pay will be included in salary surveys submitted by each party in future negotiations and arbitration, if applicable.

ARTICLE 6 PER DIEM EXPENSE

The City shall provide suitable lodging or reimburse lodging expenses incurred pursuant to current reimbursement rates for employees assigned to mutual aid, riot, or civil demonstration, where employees are required to remain overnight. The City shall provide meals or reimburse for meals pursuant to current reimbursement rates for employees assigned to mutual aid.

ARTICLE 7 EDUCATION INCENTIVE AND REIMBURSEMENT

7.1 Education Incentive

7.1.1 The City agrees to pay each person who is awarded the Intermediate Certificate given by the Commission on Peace Officer Standards and Training of the State of California additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary rate in the salary range that is approximately five (5%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either:

- a) He/she files with the Finance Department that he/she has been awarded the Intermediate Certificate from the Commission on Peace Officer Standards and Training, or
- b) Sixty (60) days after the Police Department certifies and informs the Finance Department that the person has completed all of the requirements for the Intermediate Certificate and the application for the Intermediate certificate has been filed with the Commission on Peace Officer Standards and Training.

1. Proof of Intermediate Certificate must be submitted to the Finance Department as soon as it has been received.
2. If within (180) days of the Police Department certifying and informing the Finance Department that the person has completed all of the requirement for the Intermediate Certificate and the application has been filed with the Commission on Peace Officer Standards and Training proof is not filed with the Finance Department that said Intermediate certificate has been awarded or if it is determined by the Commission on Peace Officer Standards and Training that the person is ineligible for the Intermediate Certification, any compensation provided pursuant to this agreement shall be terminated and he/she will be required to repay to the City all compensation awarded pursuant to this agreement and any future compensation required by this agreement will start from and after the first day of the biweekly pay period following the filing of proof with the Finance Department that he/she has been awarded said Intermediate Certificate. Once a determination is made that a repayment is due to the City, the full amount shall be due and payable to the City. Should an employee not make immediate payment in full any amounts due and payable will be deducted pursuant to Section 11.3.

7.1.2 The City agrees to pay each person who is awarded the Advanced Certificate additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary range that is approximately seven and one-half (7 1/2%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either:

- a) He/she files with the Finance Department that he/she has been awarded the Advanced Certificate from the Commission on Peace Officer Standards and Training, or
- b) Sixty (60) days after the Police Department certifies and informs the Finance Department that the person has completed all of the requirements for the Advanced Certificate and the application for the Advanced certificate has been filed with the Commission on Peace Officer Standards and Training.

1. Proof of Advanced Certificate must be submitted to the Finance Department as soon as it has been received.
2. If within 180 days of the Police Department certifying and informing the Finance Department that the person has completed all of the requirement for the Advanced Certificate and the application has been filed with the Commission on Peace Officer Standards and Training proof is not filed with the Finance Department that said Advanced certificate has been awarded or if it is determined by the Commission on Peace Officer Standards and Training that the person is ineligible for the Advanced Certification, any compensation provided pursuant to this agreement shall be terminated and he/she will be required to repay to the City all compensation awarded pursuant to this agreement and any future compensation required by this agreement will start from and after the first day of the biweekly pay period following the filing of proof with the Finance Department that he/she has been awarded said Advanced Certificate. Once a determination is made that a repayment is due to the City, the full amount shall be due and payable to the City. Should an employee not make immediate payment in full any amounts due and payable will be deducted pursuant to Section 11.3.

7.1.3 Each person who, as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of ten (10) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.1.

7.1.4 Each person who as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of fifteen (15) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.2.

7.1.5 A person holding a position in the classification of Police Artist (2244) is entitled to benefits under this Article only if such person is a sworn Police Officer.

7.1.6 Notwithstanding anything to the contrary contained in this Article, no person shall be entitled to receive additional compensation under the provisions of more than one section of this Article, provided, however, that in the event that any person would otherwise be entitled to such additional compensation as is specified in two or more Sections, he/she shall be paid such additional compensation at the highest rate to which he/she is entitled, and no more.

7.2 Education Reimbursement

The Tuition Assistance policy as provided in (Section 4.3.1) of the City Policy Manual of the City of San Jose shall be continued during the term of this Memorandum of Understanding. In no event shall tuition received from this program plus reimbursement from other educational incentive programs exceed the total cost of tuition and books.

ARTICLE 8 INSURANCE BENEFITS

8.1 Health Insurance Coverage

8.1.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents.

8.1.2 The City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$25.00 per month. Any additional amount above the cost of the lowest priced plan, less \$25.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

8.1.3 Effective the first pay period of payroll calendar year 2006, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$50.00 per month. Any additional amount above the cost of the lowest priced plan, less \$50.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

8.1.4 Effective the first pay period of payroll calendar year 2007, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan

for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$100.00 per month. Any additional amount above the cost of the lowest priced plan, less \$100.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

8.1.5 Effective the first pay period of payroll calendar year 2008, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

8.2 Dental Plan

8.2.1 The City will provide dental coverage for eligible full-time employees and their dependents in accordance with one of the available plans. Copies of each plan document shall be available upon request in the Employee Services Department. This includes the payment by the City of any increases in the premiums during the term hereof.

8.2.1.1 Effective during the term of this agreement, all active, eligible, full-time employees and their dependents that have the Delta Dental Plan may receive a lifetime maximum of \$2,000 per eligible full-time employee and their dependents for orthodontic coverage and a maximum for dental coverage of \$1,500 per calendar year.

8.2.2 Effective the first pay period of payroll calendar year 2006, the City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five (95%) percent of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five (5%) percent of the full premium cost for the selected plan.

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

8.3.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

- 8.3.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty (50%) percent of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty (50%) percent of that contribution.
- 8.3.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Employee Services. Alternate coverage must be acceptable by the City.
- 8.3.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period or within thirty (30) days of a qualifying event (as defined in the Employee Services Benefit Handbook) occurring anytime during the year. Employees who fail to enroll in the payment-in-lieu program during the thirty (30)-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. The employee may cancel enrollment in the payment-in-lieu of insurance program only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.
- 8.3.5 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include, but not be limited to, the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.
- 8.3.6 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.
- 8.3.6.1 **HEALTH INSURANCE:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-

enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

8.3.6.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

8.4 Psychological Counseling

The City agrees to continue the Psychological Counseling Program with the provider of services being subject to the approval of the Organization, with maintenance of Doctor-Patient relationship, and with supplementary counseling services available including an alcoholic counseling component. Service provider shall meet insurance needs for City coverage.

The existing benefits to the members relative to the Doctor-Patient relationship, as contained in the contract between the City and the current provider, shall be maintained as a minimum.

8.5 Diagnostic Psychiatric Service

The City shall provide, when deemed required, diagnostic psychiatric service in addition to the counseling described in 8.4 above.

8.6 Life Insurance

The City agrees to provide life insurance coverage in the amount of \$10,000 for each full-time employee who is eligible for and a subscriber to life insurance benefits in accordance with the City's self-insured plan.

8.6.1 Employees may apply to purchase additional Life Insurance coverage in increments at the rate available to the City in amounts equal to 1x or 2x annual salary, not to exceed \$300,000.

8.7 Physical Examinations

The City will provide adequate funding for the City Medical Services Division to conduct recurring physical examinations every two years for employees age forty-five (45) and over and every three years for employees under the age of forty-five (45). Exams for affected employees will be current by the end of the term of this Agreement.

8.8 Wellness and Lifecheck

The City agrees to provide \$60,000 per year for the duration of this contract, which will allow for the appropriate testing, re-check and specific counseling of all persons represented by the bargaining unit. The City may change the present provider after consultation with the Association.

8.8.1 The parties agree that the Wellness and Lifecheck program will not be funded for the term of this agreement. However, because this is a matter of mutual value and benefit, the parties will examine reinstating this benefit for the subsequent MOA.

8.9 Critical Incident Stress Debriefing (CISD)

The City agrees to provide adequate funding for the duration of this contract so as to make available the necessary Critical Incident Stress Debriefing (CISD) counseling utilizing the services of the present provider, except that the City may change providers after consultation with the Association.

8.10 Inoculations and Immunization

If an employee while carrying out his/her duty is exposed to a contagious disease the City agrees to pay the expense for inoculation and immunization for officer and members of his/her family. The City further agrees to reimburse any officer covered by one of the City's insurance programs any co-payment required for inoculation and/or immunization required due to the exposure to a contagious disease as a result of the officer carrying out his/her duties. Any applications for the above are subject to the review and approval of the City on the basis of oral and/or written evidence presented by the employee.

8.11 Hepatitis B: The City shall provide an inoculation/immunization program to all sworn members for the Hepatitis "B" virus at no cost to the employee. This program is in recognition of the fact that Police Officers are exposed to the Hepatitis "B" virus and it is presumed that exposure is job related for purposes of Workers' Compensation benefits.

8.12 Possible addition of vision coverage to the City's overall insurance program shall be referred to the Benefits Review Forum for evaluation. No program will be implemented prior to an opportunity for the Association to meet and confer.

ARTICLE 9 UNIFORM ALLOWANCE

9.1 The City shall provide a uniform allowance in the amount of \$675.00 per calendar year included on an employee's regular payroll check. This amount will be prorated for employees who work less than a full year. For calendar year 2004,

the \$675.00 shall be paid in January 2005. For calendar year 2005, \$675.00 shall be paid in January 2006. For calendar year 2006, \$675.00 shall be paid in January 2007. For calendar year 2007, \$675.00 shall be paid in January 2008.

- 9.2 In the event new classifications are established during the term of this Agreement and assigned to Representation Units 011, 012 and 013 which consist solely of sworn personnel, such employees shall be paid an annual uniform allowance in accordance with the provisions of this Section.
- 9.3 The City agrees to pay the prorated cost of replacement or repair for uniforms damaged in the ordinary course of performance of regular job duties. Schedules adopted by the City for such reimbursement shall be kept reasonably current.

ARICLE 10 PERSONAL PROPERTY REIMBURSEMENT

- 10.1 The City will reimburse any Officer for the repair and/or the prorata cost of the replacement of personal property when such personal property is damaged or destroyed in the performance of his/her duties; provided, however, the amount of such reimbursement for items set forth in the City schedule covering personal property reimbursement shall not exceed the amounts listed in the schedule.
- 10.2 The above-described schedule shall be kept reasonably current.
- 10.3 Personal rings and watches shall be included on the above described schedule but the amounts shall be a subject of the 1983 contract negotiations and in the absence of agreement shall be submitted to an arbitrator for decision as to the amounts.
- 10.4 The above-described reimbursement shall not apply to any personal property issued by the Department.
- 10.5 City may prohibit wearing or possession of jewelry other than watches and rings (described above) and/or exclude reimbursement therefor, in the performance of an Officer's duties.
- 10.6 These provisions shall not apply so as to require reimbursement for personal property not normally associated with an employee's daily work activity.
- 10.7 Pending litigation on personal property reimbursement shall be dismissed. Such dismissal shall be without prejudice. Provided, however, so long as the provisions of this agreement are in effect, the reimbursement hereunder shall be the exclusive remedy and the Organization, on behalf of its members, waives any and all claims for personal property reimbursement under Labor Code Section 2802 so long as the provisions of this agreement are in effect and Organization members are permitted to seek reimbursement in accordance herewith.

- 10.8 Any claims paid for personal property reimbursement in connection with pending litigation are in full satisfaction of such claims.

ARTICLE 11 PAYCHECKS

11.1 City Finance Department shall make paychecks available by 0830 hours on the day of distribution; provided, however, there will be no penalty in the event that some unforeseen problem delays distribution. In such event, the Finance Department will make every reasonable effort to make paychecks available as soon after 0830 hours as possible.

11.2 Employees may at their option, file with the Finance Department appropriate written instructions for the automatic deposit of their pay checks which instructions may be amended at such times as the Finance Department determines are reasonable.

11.3 Overpayment Payback

Any appropriate payback process from any employee to the City shall be in the same amount and at the same rate in which the overpayment occurred. This provision does not create a right of appeal where one did not exist before.

ARTICLE 12 WORKING IN A HIGHER CLASSIFICATION

12.1 Upon specific assignment by the Department Director, or his/her designated representative, an employee may be required to perform the duties of a higher classification. Such assignments shall be made only to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee. Such assignments shall not be made to vacant positions except in accordance with the rules pertaining to temporary or provisional appointments.

12.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one salary rate (step) higher in the salary range schedule than the rate received by the employee in the employee's present class, provided, however, that the employee shall not receive any compensation unless the assignment is for ten (10) consecutive work days, or eight (8) consecutive work days for employees assigned to a ten-hour day/four-day per week work schedule, or longer. In the event the assignment is for such period of time specified above, the employee shall be compensated at the appropriate rate commencing with the first work day of the assignment.

ARTICLE 13 HOURS OF WORK AND OVERTIME

- 13.1 The workweek shall be seven (7) days commencing at 12:01 A.M. Sunday and ending at 12:00 Midnight the following Saturday.
- 13.2 The workday, for pay purposes, shall be a twenty-four (24)-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 13.3 Except for employees assigned to four days of ten-hour shifts, and employees assigned to five/eight-hour shifts other than Monday through Friday, the normal work schedule shall be forty (40) hours per week, consisting of five (5) consecutive days of eight (8) hours each, Monday through Friday. Shifts other than the ten-hour shift shall be exclusive of a lunch period.
- 13.4 Employees assigned to a five/eight-hour shift schedule shall be given two (2) consecutive days off and employees assigned to a four/ten-hour shift shall be given three (3) consecutive days off even though such days off are in different work weeks except where due to a change in the employee's work schedule, it is impossible to provide two or three consecutive days off, whichever is applicable.
- 13.5 The present four/ten workweek shall continue during the term of this Agreement unless mutually changed by the parties.
 - 13.5.1 However, the Department, in its discretion, may change the following units to a five/eight workweek:

A. BFO Administrative Unit	F. Reserves
B. School Safety	G. Training
C. Crime Prevention	H. Video
D. Traffic Investigation	I. Explosive Control
E. P.A.L.	J. Captains
 - 13.5.2 In addition, modified duty non-uniformed assignments may be changed to a five/eight-hour schedule, unless they are assigned to one of the units listed in Section 13.5.1, whereupon their shift may be changed with the rest of that unit.
 - 13.5.3 Alternate Work Week

As an alternative to the normal five-day/eight-hour work schedule for employees outside of the Bureau of Field Operations, in accordance with Article 13.4 and subject to the concurrence and approval of the Chief or the Assistant Chief, a regular full-time employee may elect to work an alternate work schedule. The following conditions and restrictions shall apply to all employees electing an alternate schedule.

- 13.5.3.1 An employee may elect to establish a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed eighty (80) hours in any biweekly pay period. Alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly pay period.
- 13.5.3.2 No alternate work schedule may be established in which overtime is incurred either under this Agreement or under federal or state law. Alternate work schedules may be canceled if overtime or sick leave balances adversely affect the service level, operation, or budget of a unit.
- 13.5.3.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.
- 13.5.3.4 If one or more employees' request to establish an alternate workweek is denied, or if an alternate schedule is canceled, Association shall have the right to meet with the Assistant Chief to appeal the decision. The decision of the Assistant Chief shall be final.
- 13.5.3.5 Any alternate work schedule shall terminate upon the date of the transfer, promotion, or demotion of the employee.
- 13.5.3.6 Neither the failure of the Department to enter into an alternate work agreement, nor the termination by the Department of any such agreement shall be subject to the Grievance Procedure in Article 25; provided, however, that if alternate work agreements have been terminated on a Bureau-wide basis, such action shall be subject to the grievance procedure.
- 13.5.3.7 Consecutive days off may be waived by mutual agreement.
- 13.5.3.8 Should the employee have a scheduled court appearance or any other scheduled requirement to work on his/her

scheduled day off, the employee will adjust his/her workweek to include the days as part of his/her workweek.

13.6 An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four/ten-hour work days, or in excess of forty (40) hours per workweek, shall be compensated at the rate of time and one-half the employee's base hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement. Except as otherwise required by Article 14, no overtime compensation shall be paid for overtime worked which does not exceed thirty (30) minutes per day. Overtime worked which exceeds thirty (30) minutes in any work day shall be compensated to the nearest half-hour.

13.6.1 An employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of three (3) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime payment beyond three (3) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Payment for overtime worked, authorized pursuant to this paragraph, shall be made as soon after the pay period in which the overtime is worked as practical, but in no event longer than two pay periods after the pay period in which the overtime is worked.

13.6.1.1 Employees assigned to "pay cars" and/or assigned to work on overtime in the programs noted herein shall be paid in cash for such overtime worked. The City reserves the right to modify the listed functions as necessary.

- Entertainment Zone
- Youth Protection Program
- Youth Services Detail
- Truancy Abatement and Burglary Suppression Program
- Project Crackdown
- Hazardous Escorts
- Programs with Specific Funding Sources (i.e. grant-funded or fee-supported programs)

13.6.2 The outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. An employee may exceed the 240 limit during the year 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 year. This time off must be pre-approved by the supervisor.

- 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 year, 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. If the employee submits a plan by that date, the employee shall receive a ninety (90) 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.
- 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.

13.6.5.3 If emergency circumstances necessitate that an additional sixty (60) 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.

13.6.5.4 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.

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.

13.6.8 Disability Leave and Overtime

An employee who has taken approved time off during his/her regularly scheduled shift for medical appointments, treatment or therapy for an industrial or non-industrial injury or illness shall not be entitled to count said hours taken for such appointment, treatment or therapy as hours worked for the purposes of entitlement to overtime unless said employee is required by the Chief, or his/her designee, to work unscheduled, unplanned hours of an emergency nature (similar to a departmental holdover) or when the department issues a specific order to an employee on the day of his/her scheduled appointment, treatment, or therapy.

13.6.9 Deputy Chief Executive Leave

The classification of Deputy Chief is excluded from receiving paid overtime or accruing compensatory time off for hours worked in excess of eight (8) hours per day or forty (40) hours per week. In lieu of receiving paid overtime and compensatory time off, Deputy Chiefs are entitled to forty (40) hours of Executive Leave per calendar year. Executive Leave is not an accrued benefit, and may not be carried over to future calendar years. (Note: the calendar year begins the first day of pay period 1 and ends the last day of pay period 26.)

13.6.9.1 The Chief of Police may approve up to forty (40) additional hours of Executive Leave per calendar year for the following circumstances:

- a) when a Deputy Chief has been required to work an extraordinary amount of overtime during a particular period, or
- b) to recognize exceptional performance or achievement on a special project.

Granting additional leave should be considered exceptional rather than standard practice.

13.6.9.1.1 If the full balance of forty (40) hours of Executive Leave is not used within the calendar year, unused credit up to a maximum of sixteen (16) hours will be paid out at the end of the calendar year.

ARTICLE 14 COURT CALL-IN, APPEARANCE, COURT RECESS AND CALL BACK PAY

14.1 An employee who has completed his/her scheduled work shift and who has left the premises and is subsequently called back to work, shall be compensated for the actual hours worked at the appropriate rate or three (3) hours at the appropriate rate, whichever is greater. However, no employee shall be entitled to more than one three-hour minimum for call back per workday.

14.2 An employee who is required to report to work prior to the beginning of his/her scheduled shift, or who is required to work subsequent to the end of his/her scheduled shift, shall receive overtime compensation as set forth in Section 13.6 hereof.

- 14.3 Any employee who as part of the assigned duties is required to appear in court shall be compensated as follows:
- 14.3.1 If the court appearance is required at a time prior to the beginning of the employee's scheduled work shift, the employee shall receive the appropriate rate for the time spent, or two (2) hours at the appropriate rate, whichever is greater.
 - 14.3.2 If the court appearance is required on an employee's scheduled day off, the employee shall receive three hours compensation at the appropriate rate or the hours actually spent, whichever is greater.
- 14.4 As a declaration of existing rights and obligations, the City shall continue to compensate a member, testifying or available to testify in court for any break in the trial session, including but not limited to lunch periods at the approved compensation rate.
- 14.5 Optional Court Call-in Procedure for Misdemeanor Jury Trial Notification
- 14.5.1 Officers who are notified to appear in court for misdemeanor jury trials shall have available the option of calling a voicemail system at the District Attorney's Office after twelve o'clock noon on the day of the specified notice, to determine the status of the case prior to having actually to appear in court. If an officer chooses to utilize this optional call-in process, he/she will automatically receive a total of one (1) hour's compensation at the 1.5 rate if he/she is not required to appear in court on the noticed date.
 - 14.5.2 If an officer chooses not to utilize the call-in option described above, he/she simply fulfills the obligation to appear in court on the date and time listed on the notice and receives the appropriate overtime compensation.
- 14.6 For personnel assigned to specialized units, work shifts may be altered without incurring overtime when notice of the adjustment in scheduled hours of work is provided at least 48 hours in advance of the adjustment.
- 14.6.1 Whenever personnel in specialized units are given less than 48 hours notice of an adjustment in work schedule, the shift may be altered by up to two (2) hours without additional payment to the employee. Whenever shifts are altered with less than 48 hours notice, employees shall receive time and one half the employee's base hourly rate for every hour beyond the two-hour alteration allowed by this Article. This provision shall not apply in the event of an emergency which includes, but is not limited to, disasters, civil unrest, or major demonstrations.

14.7 For personnel assigned to beat patrol, work shifts may be altered by up to two (2) hours without incurring overtime for pre-planned/scheduled events.

14.7.1 Altered watch hours for pre-planned/scheduled events shall only occur a maximum of twice per six (6) month shift change (for a total of four (4) times per year.) The Department shall provide notice of altered watch hours in writing thirty (30) days in advance of the adjustment.

14.7.2 Whenever shifts are altered with less than thirty (30) days notice, employees shall receive time and one half the employee's base hourly rate for every hour outside of their normal shift

ARTICLE 15 STANDBY DUTY

15.1 Employees assigned to the sections noted herein and who are regularly required to perform standby duty shall be eligible for standby compensation in accordance with 15.3.

1. The Sexual Assault Investigations Unit.
2. The Homicide Detail
3. The Crime Scene Units
4. The Bomb Squad
5. Air Surveillance (See Section 5.2.8)
6. Professional Standards and Conduct Unit

15.2 Employees not assigned to a unit listed in 15.1 shall be eligible to receive standby compensation in accordance with 15.3 if the employee is explicitly directed by the employee's supervisor to perform standby duty.

15.3 An employee performing standby duty in accordance with section 15.1 or 15.2 shall be credited with two (2) hours compensation at the appropriate rate for such standby duty performed on a regularly assigned work day and three (3) hours compensation at the appropriate rate for such standby duty assigned on regularly scheduled days off. Such compensation shall be provided as set forth in Section 13.6 of this Article. If the employee on standby is called back to work, callback pay (as provided in Article 14.1) shall be paid in lieu of standby pay.

ARTICLE 16 CITY RIGHTS AND CHARTER RIGHTS

16.1 Neither party concedes or relinquishes its rights under Charter Section 1111.

Such rights include the ability by the City, for example, to propose a change in terms and conditions of employment not otherwise covered by the Agreement and to seek such change pursuant to Charter Section 1111.

In addition, the City reserves its rights to determine matters outside the scope of representation.

Thus, except to the extent that Section 1111 of the Charter of the City of San Jose grants rights to the parties herein, and except to the extent that rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or other provisions of the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; or reclassify employees; provide merit increases; assign employees overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or any City Department Agency or Unit.

The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after, or before hours of duty, without consultation or meeting and conferring with the employee affected or the San Jose Police Officers' Association representing such employee.

ARTICLE 17 ASSIGNMENTS

17.1 It is recognized and agreed that the primary obligation of the Department is to provide service of the highest quality to the public. The right to assign personnel is inherent to providing such quality service.

Management also recognizes the desire of employees to periodically request changes in work assignments. In March and September of each year, requests for shift and beat assignments based on seniority shall be accepted from the employees in the representation unit, subject to the rights of the Assistant Chief of Police or in his/her absence his/her specifically designated representative to deny such request if, in his/her opinion, the obligation of the Department to provide the public with police service of the highest quality would not be fulfilled.

17.1.1 Any employee otherwise eligible to request a shift and beat assignment as specified in paragraph 17.1 above whose request for such assignment is denied, shall be entitled upon request to an explanation of the denial from the Assistant Chief of Police or the Assistant Chief's specifically designated representative. Such request shall be made to the Assistant Chief or his/her specifically designated representative within five working days following the denial.

17.1.2 In the event the matter is not resolved by the Assistant Chief or his/her specifically designated representative, the employee may within five

(5) working days of the receipt of the Assistant Chief's decision appeal to the Employee Relations Manager by submitting a written request for review. Within ten (10) working days following the receipt of the written request for review, the Employee Relations Manager or designee shall hold a meeting with the employee and/or the appropriate employee Organization representative. A written decision shall be given to the employee and/or the appropriate employee representative within five (5) working days following such meeting.

- 17.1.3 In the event that the matter is not resolved as a result of the meeting referenced in 17.1.2 above, the employee may request a review by the City Manager or his/her designated representative. Such request shall be in writing and shall include the reason or reasons why the employee is not satisfied with the decisions previously rendered. Within ten (10) working days of the receipt of such written request for review, the City Manager or his/her designated representative shall notify the employee of the results of such review. The decision of the City Manager or his/her designated representative shall be final and binding.

17.2 Administrative Special Assignments

The City agrees to provide reasonable advance notice of openings in areas of Administrative Special Assignments, and the qualifying criteria required for interested Police Officers. Officers shall be entitled to submit a memo indicating interest in the position, and the Department thereafter can make the Administrative Special Assignment(s) at its discretion.

- 17.2.1 It is understood and agreed that special circumstances and/or requirements may preclude such notice and opportunity to apply. It is understood and agreed that decisions pertaining to the assignment of Administrative Special Assignment areas shall not be subject to arbitration. It is the intent of the City to provide interested and qualified Police Officers with the opportunity to serve in such Administrative Special Assignment areas as may exist from time to time.
- 17.2.2 When a Police Officer ceases his/her employment, with the Police Department either by resignation or Leave of Absence, other than unpaid sick leave, and then returns as a full-time employee claiming all past benefits and seniority, they are required to spend at least twelve (12) months in the Bureau of Field Operations, in a basic beat patrol function, prior to consideration for a special, administrative or regular transfer to another assignment; provided, however, the Department may assign such employee directly to an undercover assignment under special circumstances.

ARTICLE 18 TRANSFER POLICIES

18.1 Police Officer Transfer Policy

Specialized assignment transfers of Police Officers shall be governed by the Police Officer Transfer Policy dated November 30, 2005, as modified by the parties, hereby incorporated herein. Copies of that Policy shall be disseminated to Unit Commanders, and to the Police Officers Association. A copy of the policy shall be kept in the Police Department Personnel Unit.

18.2 Sergeants Transfer Policy

The transfer of Sergeants shall be governed by the Sergeants' Transfer Policy dated December 6, 2005, as modified by the parties, incorporated herein. Copies of that policy shall be kept in the Police Department Personnel Unit.

ARTICLE 19 FULL UNDERSTANDING, MODIFICATION AND WAIVER

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

19.2 Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San Jose Municipal Code, or provided in the Memorandum of Agreement shall be continued without change during the term of this Agreement.

19.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.

19.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein. This provision shall not apply to matters covered by the provisions entitled "Consolidated Arbitration," in the Grievance Procedure herein.

19.5 In the event that the City and IAFF Local 230 reach a settlement covering the time period covered by this MOA that has a total compensation cost of greater than 12.9% (not including the medical and dental concessions) plus the cost of the retirement benefit included in this agreement for IAFF, Local 230, this MOA

will reopen on the subject of total compensation and the parties will meet and confer.

This provision will not apply if the City and IAFF Local 230 reach a settlement covering the time period covered by this MOA that has a total compensation cost of 12.9% (not including the medical and dental concessions) plus the cost of the retirement benefit included in this agreement for IAFF, Local 230.

This provision will not apply to any change in Local 230 wages and benefits which occurs as the result of an interest arbitration award that is the result of contested issues resolved only via a full evidentiary hearing and substantive briefing.

ARTICLE 20 CONCERTED ACTIVITY

It is understood that:

- 20.1 Participation by any employee in this unit in a strike, work stoppage, or slow down, or any other concerted activity which results in diminishing services provided by employees in the representation unit, or the failure to perform lawfully required work, shall subject the employee to possible disciplinary action up to and including discharge.
- 20.2 Participation by any employee in picketing, which is otherwise unlawful, shall subject the employee to disciplinary action up to and including discharge.
- 20.3 If the Employee Organization, its officers or its authorized representatives violate 20.1 above or tolerate the violation of 20.1 above and after notice to responsible officers or business representatives of the Employee Organization, such officers or business representatives fail to take prompt affirmative action as is within their power to correct and terminate the conduct described in 20.1 above, in addition to any other law, remedy or disciplinary action to which it may be subject, said Organization may be subject to suspension or revocation of the recognition granted to such Employee Organization by action of the Director of Employee Relations; and the Director of Employee Relations may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Organization, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said Officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Director of Employee Relations shall not be subject to the provisions of Article 25, Grievance Procedure.

ARTICLE 21 POLICE VEHICLE

21.1 Vehicle Replacement

21.1.1 In determining when to replace police vehicles, including those commonly referred to as "detective cars," the Department shall evaluate the following factors:

- a) Mileage on the vehicle;
- b) Age of the vehicle;
- c) Assessment by City mechanics as to the useful life remaining for such vehicle;
- d) Any concerns or comments voiced by officers operating such vehicles; and
- e) Practices in other law enforcement agencies regarding replacement of similar vehicles.

21.1.2 The City agrees that in the replacement of vehicles usually referenced as detective cars, such replacement vehicles shall include air conditioning.

21.2 Police Vehicle Specifications

In the acquisition of new police patrol vehicles, the specifications currently used by the City of Los Angeles or California Highway Patrol shall be followed by the City insofar as is reasonably possible so as to provide vehicles reasonably safe and suitable for patrol purposes.

21.3 Police Vehicle Parts

The City shall follow insofar as is reasonably possible the policy of the City of Los Angeles or the California Highway Patrol pertaining to replacement parts or the equivalent thereof.

21.4 Police Vehicle Testing

All police patrol vehicles that have been damaged shall be inspected and tested prior to return to duty status and a record shall be maintained setting forth the approval for the return to duty and the persons testing the vehicle.

ARTICLE 22 LAYOFFS

22.1 Order of Layoff

When one or more employees in the same class in this bargaining unit is to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

- 22.1.1 Provisional employees, in the order to be determined by the appointing authority;
- 22.1.2 Probationary employees, in the order to be determined by the appointing authority;
- 22.1.3 Permanent employees, in inverse order of seniority within the classification being reduced, or in a higher class;
- 22.1.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

22.2 Notice Requirements

Employees subject to the provisions of this Article 22 shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

22.3 Reassignment in Lieu of Layoff

In the event of layoff, any employee so affected may elect to:

- 22.3.1 Accept a position in a lateral or lower class, in which he/she has previously served, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 22.3.2 Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of Employee Services. An employee may also accept a vacant position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during his/her most recent period of employment. Adverse decisions of said Director regarding necessary education, experience, and training shall

be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.

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

22.4 Definitions for Use in This Article

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

- 22.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
- 22.4.2 A lower class shall mean a class with a lower salary range.
- 22.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 22.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 22.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.

22.6 Layoff Reinstatement Eligible List

- 22.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a reinstatement eligible list in inverse order of seniority; i.e., the person with the greatest seniority on the reinstatement eligible list for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the reinstatement eligible list unless such person has reinstatement rights under the provisions of this Topic to a higher class than the one in which the reinstatement is being refused.

- 22.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the reinstatement eligible list for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 22.6.3 Any person who is reinstated to a class, which is the highest class to which he/she would have been entitled at the time of layoff, shall have his/her name removed from the reinstatement eligible list.
- 22.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the reinstatement eligible list, providing, however, that such person within the two-year period specified herein may request that his/her name be replaced on the reinstatement eligible list and such person's name may, in the sole discretion of the Director of Employee Services, be returned to the reinstatement eligible list.
- 22.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a reinstatement eligible list for a period longer than two years from the effective date of such person's most recent layoff.

22.7 Reinstatement of Benefits

Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 23 HOLIDAYS

- 23.1 Subject to the provisions of Section 23.2 of this Article, each employee shall be entitled to receive, as a holiday benefit from and after July 14, 1985, in lieu of any other holidays (excepting any other days proclaimed or designated by the Council as holidays for which full-time employees will be entitled to holiday leave), 3.3847 hours of time off from duty for each biweekly pay period from and after July 14, 1985. Said holiday benefit shall be given to each employee at the time to be determined by the City Manager, in his/her discretion, or by the Chief of Police with the approval of the City Manager, either before or after the biweekly pay period for which such benefit is provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the calendar year within which falls the biweekly pay period for which such

benefit is given, nor later than twenty-six (26) biweekly pay periods immediately following the biweekly pay period for which such benefit is given.

- 23.2 If, at any time on or before the expiration of twenty-six (26) biweekly pay periods immediately following the biweekly pay period during and for which any full-time employee becomes entitled to time off duty as a holiday benefit under the provisions of 23.1 of this Article, the City Manager shall find or determine that to give any such benefit would seriously impair the efficiency of the Police Department, the City Manager may order that such employee shall receive, in lieu of the holiday benefit to which he/she would otherwise be entitled for any biweekly pay period under the provisions of Section 23.1, as extra holiday compensation 5.623% of his/her regular salary during said biweekly pay period of full-time employment.

23.2.1 The wage increase effective July 2, 2006 includes consideration specific to the settlement of the Holiday-in-Lieu grievance filed on August 2, 2002. The terms of this settlement are set forth in a separate agreement dated December 7, 2005.

- 23.3 By virtue of including the language of this Article 23 in this Agreement (previously only contained in Salary Resolutions), the parties do not intend in any way to alter their previously existing duties, rights, or responsibilities.

ARTICLE 24 DUES DEDUCTION

- 24.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a representation unit represented by the Organization, dues uniformly required as a condition of membership, pursuant to the Employee Organization's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Director of Employee Relations. Payroll dues deductions shall be in the amount certified to the Director of Employee Relations from time to time by the designated Officer of the Employee Organization as regular monthly dues.
- 24.2 Deductions shall be made from wages earned by the employee for the first two pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Employee Organization the amounts so deducted accompanied by a list of the employees for whom the deduction was made.
- 24.3 City will make available to the Organization a check reflecting the dues deduction pursuant to the dues deduction provisions hereof on the Tuesday following the Friday that paychecks are issued. Any adjustments to the amount transmitted shall be made in a succeeding pay period and/or in a succeeding check to the Organization.

- 24.4 Properly executed dues deduction authorization cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Director of Employee Relations on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made. If, through inadvertence or error, the City fails to make the authorized deduction or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 24.5 It is expressly understood and agreed that the Employee Organization will refund to the employee any union dues erroneously withheld from an employee's wages by the City and paid to the Employee Organization. In the event the Employee Organization fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Employee Organization.
- 24.6 The employee shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or/in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 24.7 Since the Organization is the exclusive representative of the bargaining unit, it shall be the only employee organization entitled to dues deduction.

ARTICLE 25 GRIEVANCE PROCEDURE

25.1 Any dispute between the City and an employee, or, between the City and the Employee Organization, regarding the interpretation or application of this Memorandum of Agreement shall be considered a grievance. An employee may file a grievance on his/her own behalf, or by the President of the Employee Organization, or designated representatives.

25.2 Step I

25.2.1 An employee may present the grievance orally either directly or through his/her Employee Organization representative to the immediate supervisor within twenty-one (21) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within twenty-one (21) calendar days after receiving the oral grievance, the immediate supervisor shall give the employee a reply.

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

25.3 Step II

25.3.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Assistant Chief within five (5) working days following the receipt of the immediate supervisor's oral reply. The Assistant Chief may refer the grievance to the appropriate supervisor.

25.3.2 The written grievance shall contain a complete statement of the grievance, and alleged facts upon which the grievance is based, the reasons for the appeal, the remedy requested, and the sections of the agreement claimed to have been violated, if any. The grievance shall be signed and dated by the employee.

25.3.3 The Assistant Chief or the appropriate supervisor to whom the grievance has been referred may arrange a meeting between himself/herself, the employee, and the appropriate Employee Organization representative and attempt to resolve the grievance. In any event the Assistant Chief, or designated representative, shall give a written decision to the employee within twenty-one (21) calendar days following receipt of the written appeal to Step II.

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

25.4 Step III

25.4.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Director of Employee Relations within five (5) working days following receipt of the written decision at Step II.

25.4.2 Within ten (10) working days after receipt of the appeal to Step III, the Director of Employee Relations or designee shall schedule a meeting with the employee, the appropriate Employee Organization representative, and the Assistant Chief or the appropriate supervisor to discuss the matter. A written decision shall be given the employee or the appropriate Employee Organization representative within twenty-one (21) calendar days following the meeting.

25.4.3 If the Organization is not satisfied with the decision of the Director of Employee Relations, the appropriate representative of the Organization may appeal the grievance to Step IV -- Arbitration.

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.

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. The opinion shall be final and binding on both parties, and shall be limited to the issue, or issues involved.

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 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.

25.6 Immediate Arbitration

- 25.6.1 Any party may waive the grievance procedure time limits specified in this Article and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the Agreement in so short a period of time as to disallow the party from proceeding within the time limits of this Article. However, the method of proceeding to Immediate Arbitration must be done consistent with the following provisions.
- 25.6.2 The arbitration shall take place no earlier than the fifteenth day following the request by the grieving party for such "Immediate Arbitration," unless otherwise mutually agreed. During the two week period (14 calendar days) immediately following the request for Immediate Arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.

- 25.6.3 If the City is the responding party, the Chief of Police and the Director of Employee Relations or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Organization Representatives, in an attempt to resolve the dispute.
- 25.6.4 Once the request for Immediate Arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two week period.
- 25.6.5 The parties will attempt to have a standing list of available "Immediate Arbitrators," but if no agreement on same is reached, the parties will obtain five arbitrators, by telephone if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two-week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.
- 25.6.6 In any such case, the arbitrator selected to decide the dispute or grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in the Article, or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and just manner. However, the arbitrator may not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 25.6.7 Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.
- 25.6.8 The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all possible.

25.7 Consolidated Arbitration

- 25.7.1 If a matter goes to arbitration, and an arbitrator determines that the dispute in question is not otherwise covered by this Agreement, but would be subject to the provisions of Section 1111 of the Charter of the City of San Jose, then the same arbitrator serving as the neutral

arbitrator and chairperson shall convene a three member Board of Arbitrators and shall have the same authority as if selected as the neutral arbitrator under Charter Section 1111. The non-neutral members of the Board shall be chosen as provided in Section 1111. The Board shall conduct "mediation/arbitration." The Parties contemplate the sort of "mediation/arbitration" as the process is traditionally used in the San Francisco Bay Area. This process shall constitute issue by issue, last best offer arbitration proceedings as described in Charter Section 1111.

- 25.7.2 The parties herein contemplate eliminating the additional time and expense that would occur if a separate arbitrator had to be chosen under Section 1111 to hear/resolve the dispute in a separate proceeding.

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. This limitation is without prejudice to pending matters.
- 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 discipline shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil Service Commission. 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 III for this process. Immediate arbitration shall not apply.

25.8.7 At the last step of the grievance procedure herein, just prior to binding arbitration, the employee shall elect which remedy he/she wishes to seek – binding arbitration as provided herein or a hearing before the Civil Service Commission. 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).

25.8.8 The employee shall confirm his/her election of remedies in writing to the Director of Employee Relations.

25.9 General Provisions of Grievance Procedure

25.9.1. Although grievances may be processed during normally scheduled working hours, the employee Organization agrees that the time spent by its designated representatives shall be kept to a reasonable minimum and that no Employee Organization representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Employee Organization also agrees that it will not process grievances during periods of overtime.

25.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, where provided, or the appropriate Employee Organization representative may appeal the grievance to the next higher step within the time limits provided.

25.9.3 The Employee Organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation, except as otherwise provided by law under the Doctrine of Exhaustion of Administrative Remedies, the Employee Organization agreeing that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

25.9.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee, or the authorized representative of the Organization, filing or appealing the grievance

and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

- 25.9.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 26, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten calendar days following the date of separation.
- 25.9.6 Any of the time limits specified in Steps I through III may be extended by written mutual agreement of the parties.
- 25.9.7 No resolution of any grievance, as defined in Article 25, entitled Grievance Procedure, shall be contrary to the provisions of the Memorandum of Agreement. Copies of the resolution of all grievances, including the grievance, shall be sent to the President of the Organization.
- 25.9.8 It is understood and agreed that whenever a provision in this Article refers to an employee filing a grievance, the Organization may file such grievance either on the employee's behalf or on behalf of the Organization. In such event the processing of the grievance shall comply with all other provisions of the Grievance Procedure Article.
- 25.9.9 The Organization agrees to provide the City with a list of representatives authorized to file grievances on behalf of the Organization. Such list shall be kept current and shall contain no more than five representatives in addition to the President of the Organization.
- 25.9.10 If a party petitions to compel arbitration, then the prevailing party in such litigation shall be entitled to reasonable attorney's fees. This provision contemplates the prevailing party being either the petitioner or respondent in such litigation, including those situations in which the City is represented by the City Attorney's Office.
- 25.9.11 Nothing in the agreement between the City and the Organization shall be construed so as to prevent the Organization from working out any arrangement it chooses for the reimbursement or other payment by members of its bargaining unit for the costs of any arbitration proceeding involving a disciplinary grievance. The City shall have no responsibility for collecting such amounts.
- 25.9.12 Whenever labor/management grievances are resolved by an Employee Relations Office decision, arbitration or court action, the City will transmit information regarding such resolution to all Unit Commanders. If a matter is resolved by mutual agreement, then the

transmittal of information to all unit commanders shall be at Management discretion.

ARTICLE 26 LEAVES OF ABSENCE

- 26.1 The appointing authority, or designated representative, may grant an employee a leave of absence without pay for good and sufficient reason. Such leaves may be extended by written request of the employee, subject to approval of the appointing authority, or designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 26.2 Except as provided in Section 26.5.4, no leave, or extension thereof, granted, pursuant to the provisions contained herein shall exceed twelve (12) months.
- 26.3 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Employee Services Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave.
- 26.4 Failure of the employee to return to work on the first scheduled work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered a voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee.
- 26.5 Each employee who is granted a leave pursuant to the provisions of this Article may, upon return from leave, elect one of the following options:
- 26.5.1 Accept a vacant position in the classification held at the time the leave commenced, or
 - 26.5.2 Accept a vacant position in a lower classification for which he/she is qualified. In such event, the employee shall have upgrade rights to the classification from which he/she elects reduction, or
 - 26.5.3 Replace the least senior employee in the classification held at the time the leave commenced, or
 - 26.5.4 Continue the leave of absence without pay for a period not to exceed six (6) months.
- 26.6 Any employee who is absent without notification to his/her Department Director, or other designated authority, for two (2) consecutive work shifts, shall be

considered a voluntary resignation unless the failure to report is due to extenuating circumstances beyond the control of the employee.

- 26.7 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.
- 26.8 The parties agree to implement the Federal and State Family Medical Leave Acts.

ARTICLE 27 ADMINISTRATIVE LEAVE

An officer involved in any on-duty incident in which the officer causes serious bodily injury or death, or involved in any other incident as determined by the Chief, shall be placed on at least forty (40) consecutive hours of paid administrative leave (or other paid leave, if applicable). Within the initial administrative leave period, the Department and the officer shall meet, after which the leave may be extended at the option of the Department.

ARTICLE 28 WEAPONS

28.1 The City shall supply every officer with one of the following weapons, at the officer's choice:

- a) Sig Sauer semi-automatic pistol in model P225 or P226, or
- b) Smith & Wesson revolver model 66 in 2 1/2" or 4" barrel.

Officers who are currently issued a Smith & Wesson model 3906 or 3913 as a primary weapon may continue to carry the weapon as an option. Upon termination of City service, any supplied weapon shall be returned to the City.

28.2 Officers who elect not to carry the City issued weapon may carry as their primary weapon while on duty, at their own expense, the following weapons:

- a. A semi-automatic pistol manufactured by Beretta, Glock, Sig Sauer, or Smith & Wesson, in caliber 9mm, .40 caliber or .45 caliber, or a revolver manufactured by Colt or Smith & Wesson in .38 caliber or .357 magnum with a 4-6 inch barrel.
- b. Those officers assigned to the MERGE unit, and those officers who (1) carry it as their primary weapon as of December 6, 2005 or (2) are on the Range supervisor's official list for training to carry the 1911 O-Frame style

.45 caliber pistol thirty (30) calendar days after ratification of this MOA, may choose to carry a 1911 O-Frame style .45 caliber pistol.

- 28.2.1 All officers who participate in either option must also purchase, at their own expense, the holster and ammunition case for the selected weapon.
 - 28.2.2 All officers who participate in option (a) must attend and successfully complete transition training under the direction of the Range Master.
 - 28.2.3 All officers who participate in option (b) must attend and successfully complete the San Jose Police Department Range 10-hour training course specifically designed for that weapon, must have satisfactorily completed the MERGE or Training Unit handgun school, and must qualify with that weapon on a semi-annual basis.
 - 28.2.4 All officers who participate in either option are required to turn in their City-issued semi-automatic pistol or revolver upon completion of their transition training.
 - 28.2.5 All weapons declared for use under either option must be inspected, approved and registered with the Range Master prior to training. These weapons must be standard factory production with no modifications, unless the modification has prior approval from the Range Master.
- 28.3 Officers hired prior to July 6, 1972 may also carry the following weapons:
- 28.3.1 A Smith & Wesson or Colt revolver no smaller than .38 caliber or larger than .44 magnum with a 4-6 inch barrel.
 - 28.3.2 A semi-automatic pistol in 9mm or .40 or .45 caliber.
- 28.4 All officers, regardless of date or hire, may carry a semi-automatic pistol in .380 caliber for any plainclothes assignment, off duty, or as a back-up weapon.
- 28.5 Any officer may carry a concealed secondary (back-up) weapon while on duty. The secondary weapon may be any of the above listed weapons or a Colt or Smith & Wesson revolver in 9mm, or .38 caliber or 357. Magnum with no shorter than a 2 inch barrel or a Colt, Beretta, Browning (F.N.), Mauser or Walther semi-automatic pistol in .22, .25 or .32 caliber.
- 28.6 Any officer may carry while off duty any of the above-described weapons, provided that the officer has fulfilled those sections in the Department's Duty Manual regarding range qualifications.

- 28.7 Subject to all of the above restrictions of the Article, all officers, while assigned to a plainclothes capacity, have the option of carrying any of the above-described weapons, with a minimum barrel length of two inches.
- 28.8 The City acknowledges its responsibility to design and administer a training program in the safe and effective use of firearms.
- 28.9 The City shall provide adequate rounds of ammunition for training and qualification with weapons described in this Article.

ARTICLE 29 AUTHORIZED REPRESENTATIVES

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

- 29.1 Management's principal authorized agent shall be the Director of Employee Relations, or his/her duly authorized representative except where a particular Management representative is otherwise designated.
- 29.2 The Employee Organization's principal authorized agent shall be the President of the San Jose Police Officers' Association, or his/her duly authorized representative.

ARTICLE 30 VACATIONS

- 30.1 Each eligible full-time employee, who has been employed for at least thirteen (13) biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:
 - 30.1.1 Each employee shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or amendments thereto. To wit, an employee shall be entitled to accrue vacation leave in the amount specified below for each cycle of twenty-six (26) full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of his/her employment as specified below:

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

30.1.2 Carry-Over of Vacation Leave

An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability.

30.1.3 Reimbursement for Unearned Vacation Leave

If the employment of any full-time employee should cease, and if he/she should have taken more vacation leave than he/she had accrued at the time of termination of his/her employment, there shall be deducted from his/her final pay, or he/she shall refund to the City, such pay as he/she shall have received for vacation leave theretofore taken by him/her. The provisions of this Subsection 30.1.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of the employee's death or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one year in duration.

30.1.4 Payment for Unused Accrued Vacation Leave Upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued.

30.2 Vacation Pay

If, in the judgment of the City Manager it is desirable by reason of a shortage of manpower or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, he/she may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to his/her regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, he/she may elect, in writing, filed with the Director of Employee Relations, to carry over such leave to the subsequent cycle of twenty-six (26) biweekly pay periods.

30.3 Vacation Leave

Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such Department, except no employee who is authorized to take a leave for vacation

purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a Department of the City government, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification.

30.4 Computation of Vacation Leave

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

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

30.5 Vacation/Sick Leave Conversion

30.5.1 In the event a member becomes seriously ill or seriously injured requiring hospital treatment or hospitalization while on vacation, and it can be established that the member is incapacitated due to the illness or injury, the day or days he/she is sick under these circumstances shall be carried as sick time rather than vacation and the member will for all purposes be treated as though he/she were off solely for the reason of his/her illness or injury. Upon request, the member shall submit medical documentation of the illness or injury from attending physician.

ARTICLE 31 SICK LEAVE

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

31.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616, up to a maximum of ninety-six (96) hours per year. Only paid leave for sick

leave, holidays, vacation, disability, compensatory time off, or other paid leave shall be considered as time worked for purposes of this section.

- 31.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments; illness in the immediate family as defined herein; or absence of an eligible female employee due to illness, injury or disability related to pregnancy or childbirth. Immediate family shall be limited to the eligible employee's mother, father, spouse, Domestic Partner registered with the Employee Services Department, child, stepfather, stepmother or step child.

Up to forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law or mother-in-law.

- 31.1.3 Accrued sick leave may also be utilized for job-related illness or injury if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Employee Services or his/her designated representative following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.

- 31.1.4 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.

- 31.1.5 If an employee is no longer entitled to disability leave, then the Employee Services Director shall evaluate the prospects of the employee's return to work and shall have reasonable discretion to authorize use of sick leave; provided that in no event shall the employee receive an amount, including any workers' compensation temporary disability payments, in excess of his/her regular base pay.

- 31.1.6 Accrued sick leave shall be allowed for any absence from work for treatment of intoxication, chronic alcoholism, or use of narcotics prescribed or not prescribed by a licensed physician, if approved by

the City physician. This section shall not affect the City's authority to discipline employees.

- 31.1.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he/she or she, or someone on his/her or her behalf, notifies his/her or her immediate superior or Department Director, or the Director of Employee Services, of his/her or her intent to take such sick leave, and of the reasons therefor, prior to or within one hour after the commencement of the sick leave provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse of such employee.
- 31.1.8 An employee may be required to furnish substantiation for any absence for which Sick Leave payment is requested.
- 31.1.9 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, or on account of routine medical or dental appointment needs of the employee, in all situations where such employee is not entitled to sick leave with pay.
- 31.1.10 Any full-time employee who is unable to return to work after being absent on unpaid sick leave for twelve (12) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service.
 - 31.1.10.1 The city agrees to indemnify the association as to any liability arising solely from the implementation of this Section 31.1.10. The indemnification also extends to the act of Association in cooperating in the defense of this section before any forum. However, the City will not indemnify the Association for any liability caused by separate acts or omissions independent of the acts described in Section 31.1.10. For example, the City would not indemnify the Association if the Association is found liable for misrepresentation or nondisclosure to its membership, or liable for any breach of duty of fair representation other than a breach predicated solely on the acts or omissions described in Section 31.1.10.

The City will not pay attorneys' fees to or on behalf of the Association but at the sole option of the Association, the City Attorney's Office will defend the Association against claims or lawsuits arising from implementation of this Section 31.1.10 so long as the Association waives any

conflict of interest, actual or potential, arising out of the representation of such counsel. However, legal counsel for the City shall keep Association informed of all developments particularly as to any possible settlement of the dispute/litigation. The Association shall have the right to participate in the defense.

The City's obligation to indemnify, as described above, is conditioned upon the City having primary authority for the defense. The Association and the City attorneys shall cooperate in the defense of the case. The Association may not agree to any settlement involving its financial liability without consent of the City.

31.2 Sick Leave Payout

Sick leave payout shall be given to full-time benefited employees who are members of the Federated City Retirement System and the Police and Fire Retirement Plan at the time of retirement or death under one of the following conditions:

31.2.1 Police and Fire Retirement Plan

The employee is a member of the Police and Fire Retirement System and retired under the provisions cited in the plan and credited with at least twenty (20) years of service in this retirement plan or credited with any service prior to a service-connected disability retirement.

31.2.2 Federated City Retirement System

The employee is a member of the Federated City Retirement System and retired under the provisions cited in the plan and credited with at least fifteen (15) years of service in this retirement plan or credited with at least ten (10) years of service prior to a service-connected disability retirement.

31.2.3 Terminated Employee with Vesting Rights

The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to the provisions of the San Jose Municipal Code and following such termination qualifies for retirement and retires under the provisions cited in the code and has at the time of retirement credit for at least;

- 20 years of service in the Police and Fire Retirement System

- 15 years of service in the Federated City Retirement System

31.2.4 Death During Service

The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least;

- 20 years of service in the Police and Fire Retirement System
- 15 years of service in the Federated City Retirement System

31.2.5 Payout shall be determined as follows:

31.2.5.1 If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specified percent of his/her hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death.

Less than 400 hours: Hours accumulated x 50%
of final hourly rate

or, 400 – 799 hours: Hours accumulated x 60%
of final hourly rate

or, 800 – 1200 hours: Hours accumulated x 75%
of final hourly rate.

31.2.5.2 If a full-time employee at the time of his/her service retirement has between 800 and 1,200 hours of unused sick leave, at the employee's request he/she shall be paid hours accumulated X 80% of final hourly rate.

31.2.5.3 If a full-time employee at the time of his/her service retirement or upon the employee's death has 1,200 hours or greater of earned unused sick leave, he/she, or his/her estate, shall be paid a sum of money equal to 100% percent of his/her hourly rate at the time of his/her death or service retirement, whichever is earlier, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her death or retirement. If, after retirement, the employee switches from service to disability retirement, the employee shall repay to the City

the difference in sick leave payout between service and disability retirement (e.g. 100% service, 75% disability).

31.2.5.3.1 An employee who, at the time of his/her retirement, qualifies for benefits in the 800 to 1,200 hour category as provided in subsections 31.2.4.1 and 31.2.4.2 above, shall be credited, for insurance purposes only, with a value equal to twenty-five (25%) percent of his/her hourly rate of pay for those individuals in the seventy-five (75%) percent payment category or a value equal to twenty (20%) percent of his/her hourly rate of pay for those individuals in the eighty (80%) percent payment category at the time of his/her retirement or termination, whichever is earlier, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement, or by 1,200 hours, whichever is less. The City shall pay the cost of health and/or dental insurance premium, for the type of coverage specified by the employee, for the employee or for the employee and his/her dependents under one of the health and/or dental insurance plans available at the time to regular full-time City employees, until such time as the total amount of such payments equals the total amount credited to such employee hereunder, or until the death of such employee, whichever is earlier.

31.2.6 Payment for Accrued Sick Time

Upon retirement (Service or Service Connected Disability) an officer shall receive a lump sum cash payment for the total amount of accrued sick time hours.

31.2.7 Death of Terminated Employee

The estate of any full-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to the provisions in the San Jose Municipal Code and dies (on or after July 10, 1977) prior to becoming eligible for

retirement allowances as cited under provisions of the San Jose Municipal Code and has at the time of death credit for at least;

- 20 years of service in the Police and Fire Retirement System
- 15 years of service in the Federated City Retirement System

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

ARTICLE 32 DISABILITY LEAVE

32.1 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City who is required to be absent from active service for the City as the result of injury arising out of and in the course of his/her full-time employment with the City, shall be deemed to be on Disability Leave of Absence from active City service from the time he/she is required because of such injury to be absent from such active City service, to the time it is no longer required by such injury to be absent from such active service or until his/her employment with the City ends or is terminated, whichever is the earlier time, and in such situation, such full-time City employee shall be entitled to receive, and shall be paid, in lieu of his/her regular salary, and in addition to such temporary disability compensation as he/she may be entitled to under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, such temporary disability leave compensation, if any, as he/she may be entitled to under the following provisions of this Article for the periods of time hereinafter specified in this Article.

32.2 Anything elsewhere to the contrary notwithstanding, no full-time employee of the City who is required to be absent from active service for the City as a result of any injury shall be deemed to be on disability leave of absence, or be entitled to any compensation or other benefits under the provisions of this Article unless such employee, as a result and because of such injury and absence from active City service, is entitled to temporary disability compensation from the City under and by virtue of the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California. If the Workers' Compensation Appeals Board of the State of California, or any judicial court having jurisdiction over the matter, should determine that such employee is not entitled to temporary disability compensation from the City under said provisions of said Labor Code, said employee shall not be entitled to any benefits under the provisions of this Article, and any monies theretofore paid to him/her under the provisions of this

Article shall be deemed to have been paid in error, and the City shall be entitled to recover the same.

- 32.3 An employee of the City shall not be deemed to be on disability leave of absence and he/she shall not be entitled to any compensation or other benefits under the provisions of this Article if the injury as a result of which he/she is required to be absent from active City service results from (i) an act of gross negligence of such employee, or (ii) any work voluntarily undertaken by such employee which he/she had been prohibited from engaging in prior to the date of such injury by an examining physician of the City.
- 32.4 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article for any period of absence from active City service if he/she is offered alternative employment during such period of absence in a class of employment identical or substantially similar to that in which the employee worked immediately prior to the time he/she was required to be absent, and if, in addition, such employee was physically qualified for such alternative employment and refused or failed to accept such employment.
- 32.5 In no event shall any compensation or other benefits be payable under the provisions of this Article to any employee, because of absence resulting from an injury, for any period of time greater than the shortest of any of the following periods of time, to wit: (i) the time during which the employee is required to be absent from active City service as a result of injury arising out of and in the course of his/her full-time employment with the City, (ii) the period of time for which temporary disability compensation is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, (iii) one year. Also, no employee shall be entitled to any benefits or compensation under the provisions of this Article because of absence resulting from an injury for any time after the expiration of five years immediately following the date of such injury.
- 32.6 Unless and except to the extent otherwise expressly provided in this Article, an employee who becomes entitled, because of disability, to any leave of absence, compensation or other benefits under the provisions of this Article, shall not be entitled to any salary, leave of absence or other compensation under the provisions of any other Section or Sections of this Article, or under the provisions of Chapter 3.12 of Title III of the San Jose Municipal Code, or under the provisions of any other ordinance or resolution, for or because of his/her injury or absence from active service, the leave, compensation and benefits provided by this Article for disability of such employee, being in lieu of, and not in addition to, salary leaves of absence, or other compensation or benefits to which the employee might otherwise become eligible under the provisions of any other Section of this Article, or under the provisions of Chapter 3.12 of Title III of the San Jose Municipal Code.

- 32.7 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City on disability leave of absence shall be entitled to the following temporary disability leave compensation, to wit:
- 32.7.1 For the first 365 days of his/her disability leave of absence, or for such portion of such 365 days as he/she may be absent on such leave where he/she is absent for less than the full term of such 365 days, he/she shall be entitled to an amount of money which when added to the temporary disability compensation paid or payable to him/her for such period of time under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, will equal one-hundred (100%) percent of what would have been his/her regular salary for such period if he/she were in active service rather than on disability leave of absence.
- 32.7.2 For any period of disability leave of absence following the expiration of the above-mentioned periods of time, he/she shall not be entitled to any compensation, except as provided by Article 31 hereof.
- 32.8 No employee shall be entitled to any compensation or other benefits under the provisions of this Article unless the Director of Finance shall have determined that such employee is entitled to such compensation or benefits.
- 32.9 The Director of Finance in order to properly make any determination respecting an employee's claim to benefits hereunder, may require the employee to present evidence proving that such employee is entitled to the benefits claimed, including, but not limited to, proof of the injury, proof that it arose out of and in the course of his/her employment with the City, proof of the disability and of its duration, and proof of any other relevant matters. Also, said Director may require the employee to submit himself to medical and physical examinations by physicians selected by said Director.
- 32.10 The Director of Finance shall not make any determination holding that an employee is entitled to any compensation or leave of absence hereunder for any period of time because of an injury if the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, shall have already determined that such employee is not entitled because of such injury to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for said period of time, under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California. Any such determination by said Director in violation of this paragraph shall be null and void.
- 32.11 Also, in the event the Director of Finance should determine that an employee is entitled to any compensation or leave of absence hereunder for any period of

time because of an injury, and, subsequently, the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, should determine that the employee is not entitled, because of such injury, to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for such period of time, under the Workers' Compensation provisions of Division 1 or Division 4 of said Labor Code, then in that event, the determination of said Director shall become null and void and the City shall be entitled to reimbursement for all monies, if any, theretofore paid by the City to said employee for or because of said injury and absence.

ARTICLE 33 BEREAVEMENT LEAVE

33.1 Each full-time employee shall be granted bereavement leave with full pay for a period of forty (40) work hours to attend 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) calendar days following the death of the eligible person. Under extreme circumstances, the fourteen (14)-day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations regarding the waiver shall be final, with no process for further appeal:

- a) Parent/Step Parents
- b) Spouse
- c) Child/Step-Child
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparents/Step-Grandparents
- f) Great Grandparents/ Step- Great Grandparents
- g) Grandchildren
- h) Domestic Partner
- i) Sister in-law/Brother in-law/Daughter in-law/Son in-law

33.1.1 A domestic partner, as referenced in Section 33.1, must be the domestic partner registered with the Department of Employee Services.

33.2 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.

ARTICLE 34 NON-DISCRIMINATION

34.1 Parties agree that they and each of them shall not discriminate against any employee or Organization member on account of race, color, creed, religion, sex, sexual orientation, national origin, ancestry, age, marital status, physical or mental disability, familial status, or political affiliation. An employee seeking to

utilize the grievance procedure, claiming a violation of this sub-paragraph, shall make an election of remedies between the grievance procedure and any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. No employee shall be allowed to pursue the grievance procedure claiming a violation of this subparagraph if that employee cites the same underlying facts in pursuing any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964 and if no adverse finding has been rendered in pursuit of such other remedy. When an employee seeks to use the grievance procedure claiming a violation of this subparagraph, the City, the Organization and the employee shall enter into a complete settlement agreement which provides that in exchange for the agreement to voluntarily settle the dispute through the grievance procedure, the employee agrees to waive his/her right to pursue any other remedy otherwise available through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. Such settlement agreement shall contain a provision that the employee has been advised of his/her right to consult an attorney and/or a local, State or Federal anti-discrimination agency regarding his/her discrimination claim and that his/her consent to the settlement agreement is voluntary and knowing.

- 34.2 The parties agree that they and each of them shall not discriminate against any employee or Organization member because of membership or lack of membership in the Organization, or because of any authorized activity on behalf of the Organization. However, nothing herein shall preclude a unit commander from denying or delaying the release from any given unit (or team in B.F.O.) of more than one Organization representative in the case of operational necessity.

ARTICLE 35 MAINTENANCE OF MEMBERSHIP

- 35.1 Except as otherwise provided herein, each employee who, on December 14, 2005, is a member in good standing of the Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Organization as a condition of retaining membership.
- 35.2 Any employee who, on December 14, 2005, is not a member of the Organization or any person who becomes an employee after December 14, 2005, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.
- 35.3 Any employee who, on December 14, 2005, was a member of the Organization, and any employee who subsequently becomes a member may, during the period beginning May 1, 2006 through May 31, 2006, the period beginning May 1, 2007,

through May 31, 2007, and the period beginning May 1, 2008, through May 31, 2008, resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the Director of Employee Relations with a copy to the Organization.

- 35.4 The Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

ARTICLE 36 SENIORITY

- 36.1 Employees shall be placed on the classification seniority list in accordance with the date they were first placed on the payroll of the Police Department as full time sworn Officers. When two or more employees are assigned to the payroll on the same date, preference in placement on the list shall be given based on the relative standing on the Police Officer eligibility list.
- 36.2 Seniority list placement for Police Sergeant, Police Lieutenant and Police Captain shall be based on the date of rank. Where two or more employees are promoted to the same rank on the same date, placement on the list shall be based on relative standing on the respective eligibility lists.
- 36.3 Placement on the seniority list shall not be affected by any authorized leave with pay.
- 36.4 The Police Administration shall prepare an accurate list setting forth the present seniority dates of all Officers covered by this agreement. Such lists shall resolve all questions of seniority affecting Officers covered under this agreement. The seniority list shall be updated every twelve (12) months and distributed to all Unit Commanders with one copy being delivered to the Organization President.

ARTICLE 37 LABOR MANAGEMENT COMMITTEE

- 37.1 There shall be a Department Labor/Management Committee consisting of three (3) representatives of the Department at the rank of Lieutenant and above, and three (3) members of the Association. The Chief of Police, or his/her designee, shall sit as one of the Department representatives and any of the six (6) members may be replaced with an alternate from time to time. The Director of Employee Relations shall be requested to attend Labor/Management meetings and shall be provided an agenda in advance. The Director of Employee Relations shall sit at these meetings and attempt to resolve concerns to mutual satisfaction.

- 37.2 The Labor/Management Committee shall meet no less than quarterly and shall consider and discuss matters of mutual concern pertaining to the improvement of the Department and the welfare of its employees. Accordingly, the Labor/Management Committee will not discuss grievances properly the subject of the procedural process except to the extent that such discussion may be useful in suggesting improved department policies. Either the Association representatives or the Department representatives may initiate discussion of any subject of a general nature affecting the operation of the Department or its employees.
- 37.3 An agenda describing the issue(s) to be discussed shall be prepared by the initiating party and distributed at least three days in advance of each meeting, and minutes shall be kept and maintained.
- 37.4 All persons representing both parties sit as equals with the Director of Employee Relations sitting as the facilitator. Nothing in this section shall be construed to limit, restrict or reduce the management prerogatives outlined elsewhere in this agreement.

ARTICLE 38 POLICE EQUIPMENT

38.1 Flashlights

City will issue "SL 15" or equivalent plastic flashlights with "SL 15 Plus" or equivalent bulb to approximate 20,000 candlepower. Each employee will be issued for his/her own use as personal equipment one such flashlight and recharger plus any necessary parts or replacements.

38.2 Police Shield

The City shall authorize the possession of two Police identification badges by individual Police Officers. The past practice of providing one authorized Police badge inscribed upon which is the Officers serial, or identification number, shall be continued. The second authorized badge may be purchased at the expense of the individual Officer as long as it resembles the Department issued badge in all of its detail except the quality of material from which the badge is made. The individually purchased badges shall be the sole property of the Officer. However, any Officers leaving the service for reasons other than retirement shall turn in the second badge as well as the Department-issued badge.

38.3 Lockers

The City shall endeavor to make available additional full length lockers for storage of personal clothing and property.

ARTICLE 39 MODIFIED DUTY ASSIGNMENT

Modified duty assignments shall be governed by the Consent Decree dated June 21, 2005, for the term of this agreement.

ARTICLE 40 PROMOTIONAL TESTING

Promotional testing shall be subject to the terms and conditions of a separate Memorandum of Agreement between the city of San Jose and the San Jose Police Officers' Association.

ARTICLE 41 TRAINING

41.1 FBI Academy

During all future twelve (12) month periods the Police Administration may assign one or more members of the Command Staff (the rank of Lieutenant and above) to attend the National FBI Academy if the Academy makes a partially subsidized opening available to the City and a member volunteers to participate. All remaining costs (aside from above-mentioned subsidy) will be borne by the City. The method of selection for attendance shall be from a list of volunteers arranged after an adequate time period of notice. Selection shall be at discretion of the Chief. In the event adequate funding for more than one Command Officer to attend the Academy in any single annual budget period is determined, the same process for selection to attend shall occur.

41.2 Remedial Driver Training

Any Officer involved in two or more preventable accidents within a one year period shall receive remedial Driver Training so long as the Regional Academy makes such training available to the City. Any additional training for bargaining unit personnel shall be assigned in a non-arbitrary manner.

41.3 Library

There shall be maintained at each Police facility a complete library selection including thirty (30) copies of each book, manual, periodical, study guides, etc. that are listed as required study material for all level promotional examinations.

41.4 Training for Department Authorized Equipment

Training for the approved use of all Department authorized equipment will be completed at the Department's expense. Compensation of employees for such training shall be as follows: instructors will be compensated for all instruction;

students will be on their own time, if their training does not fall within their Department authorized working hours.

41.5 Athletic Facilities

The City agrees to provide adequate space in the appropriate police facilities for the installation of the necessary gymnasium athletic workout equipment purchased by the Association.

The Association agrees to be responsible for the installation of that equipment which it purchases. Furthermore, employees of the Police Department, and one POA representative, shall be allowed continual access to the designated space for the purpose of utilizing any piece of athletic workout equipment located therein. The City agrees to accept any liability associated with the installation, use and maintenance of all above referred gymnastic equipment. Absent a special order, employees are using these facilities on their own time.

ARTICLE 42 ORGANIZATION NOTIFICATION OR COMMUNICATIONS

- 42.1 The City shall, through the City/County Communications Department notify the On-Call Organization Representative of all incidents involving on-duty sworn Police Department personnel that may require the services of an Organization Attorney or Psychologist, i.e., shooting, accidents, major member arrest situations, etc. That is, an Organization representative is on the call-up list.
- 42.2 The Department agrees to route to the Organization President any general order, special order or personnel order. The Department will use reasonable effort to cause its unit commanders to route to the Organization President any orders or directives of a generalized nature, which affects any one or all persons, represented by the unit.
- 42.3 Upon written request of the Organization, the City Attorney himself/herself shall continue to meet with Organization representatives to discuss any perceived problems in legal representation of Officers.
- 42.4 The City agrees to put the POA on the distribution list of the Watch Commander's logs.

ARTICLE 43 INVESTIGATIONS

- 43.1 The City agrees that an Officer suspected of misconduct may be ordered to answer questions, notwithstanding the officer's constitutional rights, upon penalty of discipline, if advised that such answers may not be used in any criminal

proceedings against the officer. Provided, however, only Internal Affairs investigators or command staff may so direct an Officer.

- 43.2 No photo of an Officer under investigation for criminal violations or disciplinary matters shall be made available to any media.
- 43.3 If an officer is under investigation for misconduct of any kind at the time when he/she is eligible for transfer (including transfer to a premium pay assignment), then the fact of such investigation shall not be considered in making a decision on his/her transfer, but the result of such investigation may cause the transfer to be rescinded and/or other discipline to be imposed.
- 43.4 The Department shall undertake investigations of possible misconduct and dispose of them within a reasonable period of time. While the parties recognize that the final disposition of such cases may be delayed by related criminal investigations and other considerations outside the complete control of the City, the Department shall make reasonable efforts to minimize these delays and dispose of cases in a timely manner. If an investigation is not completed within 120 days of coming into Internal Affairs, Internal Affairs will prepare a status report at the end of the 120 day period and at 60 day intervals thereafter to be sent to the affected police officer. The inability of the Department to dispose of a case within a particular period of time shall not be subject to the grievance procedure.

ARTICLE 44 CHAIN OF COMMAND

All Details, Units, and Bureaus within the complete structure of the San Jose Police Department shall follow the chain of Command in the supervisory staff assigned to those Units. That is, Sergeants shall not be supervised by Police Officers and Lieutenants shall not be held responsible to Sergeants, etc., provided, however, during training and non-operational functions, a lower ranking employee may be in charge.

ARTICLE 45 COPIES OF AGREEMENT

The City will provide one hundred (100) 8.5 x 11" copies of this agreement to the POA. The City will also provide an electronic file of this agreement for the POA to use to make additional copies. Additionally, this agreement will be available on the City's Intranet and Internet websites.

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.

ARTICLE 47 DEPARTMENT AUTHORIZED EQUIPMENT OR TECHNIQUE

47.1 While acting in the course and scope of his/her employment, the use by an employee either of a department-authorized or department-required piece of equipment and/or technique, in and of itself, shall not adversely affect the employee's right to indemnification under the California Government Code as to a compensatory damage claim award against such employee, pertaining to such use.

47.2 Neither party concedes or relinquishes any of its rights under the California Government Code and other applicable statutes or precedent.

ARTICLE 48 RECRUIT CLASSIFICATION

48.1 All applicants who meet the requirements for the classification of Police Officer and who are selected for possible appointment to the classification of Police Officer shall first be classified as a Police Recruit while in attendance and training at the Regional Police Academy. A Police Recruit shall be a non-sworn employee unless and until he/she or she completes the police academy training and is graduated from the Regional Police Academy. Upon completion of such training and graduation from the Academy, a Police Recruit will be eligible to be appointed to the classification of Police Officer. While they are in the class, provisions of this Agreement unique to police officers and Disability Leave Supplement shall not apply to Police Recruits. They shall be treated by the City as a civilian employee for these purposes.

48.2 The established salary for a Police Recruit shall commence at approximately fifteen (15%) percent below that of first step Police Officer.

48.3 Police Recruits shall be awarded a step increase approximately five (5%) percent upon being sworn in as a Police Officer. Their next step increases shall be due on their first, second, third, fourth, fifth and sixth anniversary dates of being appointed to the classification of Police Officer.

48.4 Whenever the City hires a Police Recruit or sworn Police Officer as a new employee, it will inform the Association in writing of such employment, giving the name, date of hire and job classification of the new employee.

The City also agrees to allocate no less than one hour at the end of second day of employment of Police Recruit(s) (new hires) for the POA to dispense information about insurance and other benefits available through the Association, the Mentor Program, the Wellness Program, salary continuation, Employee Assistance Program, Critical Incident Stress Debriefing and other Association matters.

48.5 The recruit classification is a temporary classification running only for the period of one Police Academy. There is no classification comparable to the Police Recruit classification.

48.5.1 The City must apply the medical standards for a Police Officer to all Police Recruits. In addition, Police Recruits must be field ready prior to being promoted to the classification of Police Officer.

- 48.5.2 If a Police Recruit is temporarily disabled or is otherwise not field ready for medical reasons, he or she will not be promoted to the classification of police officer.
- 48.5.3 If a Police Recruit is temporarily disabled or is otherwise not field ready for medical reasons, he or she will continue to serve as a police recruit in a Modified Duty capacity during the term of the Academy.
- 48.5.4 At the conclusion of the Academy, all Recruit positions will be eliminated, At that time,
- 48.5.4.1 Any Recruit who has not been promoted to the classification of Police Officer because he or she has failed to complete the Academy shall be released. However, if the Recruit was unable to complete the Academy solely due to temporary disability or other medical reasons, he or she may request reinstatement to the Police Recruit classification at the initiation of a future Academy. Any request for reinstatement must be within three (3) years of the incumbent's separation. The incumbent shall be reinstated to the future Academy if the Department deems the incumbent to be eligible.
- 48.5.4.2 Any Recruit who has successfully completed the Academy but has not been promoted to the classification of Police Officer solely because he or she is not field ready due to a temporary disability or other medical reason shall be placed on unpaid medical leave during the period of disability, up to a maximum of one (10 year from the end of the Academy.

ARTICLE 49 RETIREMENT

- 49.1 Benefits of the Police and Fire Retirement Plan System are to be paid in accordance with the provisions of the plan.
- 49.2 The City shall provide an annual pre-retirement advisory program covering benefits and rights of retired employees. The program shall include retiree tax information, workers' compensation and rehabilitation benefits, and available alternatives to retirement.
- 49.3 Permanent employees represented by the POA who transfer to Fire service shall remain in the Police and Fire Retirement plan while they are in the Fire Academy.
- 49.4 The current formula for calculating retirement benefits is two and one half (2 ½%) percent of final compensation for each year of service with the City up to twenty (20) years, plus three (3%) percent of final compensation for each year of service

with the City between 21 and 25 years, and four (4%) percent from 26-30 years subject to a maximum of eighty-five (85%) percent.

The enhanced benefit formula will be changed to two and one half (2 ½%) percent of final compensation for each year of service with the City up to twenty (20) years, plus four (4%) percent of final compensation for each year of service with the City between 21 - 30 years subject to a maximum of ninety (90%) percent.

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

The enhanced benefit formula will be effective for all members of the Police & Fire Retirement Plan who retire on or after July 1, 2006.

49.5 Effective July 1, 2006, the following employee paid plan changes will be in effect for all employees represented by the organization;

49.5.1 Elimination of the thirty (30)-day window for the redeposit of withdrawn contributions, allowing for redeposit at anytime for active employees. Total impact to the plan to be paid by affected employee.

49.5.2 Elimination of the thirty (30)-day window for the purchase of service credit for previous Federated Retirement service credit, allowing for purchase at any time for active employees. Total impact to the plan to be paid by affected employee.

49.5.3 The ability to purchase service credit for time on unpaid leave of absence. Total impact to the plan to be paid by affected employee.

ARTICLE 50 MODIFICATION OF BARGAINING UNIT WORK

50.1 City Attorney's Office. Officers and Sergeants assigned to the City Attorney's Office may be reassigned to the Police department but such positions will not be civilianized.

50.2 For optimal resource management, the City, in its discretion, may add civilian personnel to perform the work currently performed by sworn personnel provided the following:

50.2.1 The POA bargaining unit will not be reduced in number of positions as a result of that action,

50.2.2 The work is not normally associated with sworn Peace Officer status and does not require a P.O.S.T. certificate. Examples of duties which are normally associated with Peace Officer status include the following:

- criminal investigations
- patrol-related functions
- emergency services
- community policing
- training of sworn personnel on public safety-related issues
- processing of prisoners, and

50.2.3. The City conducts a meeting with the POA to discuss operational impact prior to making a final decision.

50.3 It is understood by the parties that Investigative Aides and Community Service Officers are applicable to subsection 50.2.2 of this provision.

50.4 During the term of the 2000-03 agreement no more than four (4) sworn positions will be "civilianized" in accordance with subsection 50.2. Any further civilianization, as defined by this section, would be subject to the meet and confer process at the expiration of this MOA.

50.5 The parties will evaluate the effects and success of subsections 50.2-50.4 at the end of this agreement. Agreed upon modifications, if any, shall be included in the following agreement.

ARTICLE 51 COMMUNITY POLICING

51.1 The POA hereby reiterates its support for the concept and implementation of community policing, and endorses the same. The POA and the City agree to combining efforts to ensure the success of Community Policing.

51.2 The mutual efforts of the parties include, but are not limited to, joint presentations by the Chief (or his/her designee) and the POA President (or his/her designee) to support Community Policing before members of the Police Department, community groups, media or other forums or groups determined by the parties.

51.3 Each party shall also support and encourage community policing on its own. To this end, each six months prior to sign up for shift changes, the POA agrees to send a notice and discuss at union meetings the fact that it urges its members to remain in assignments for at least two six-month rotations to further Community Policing efforts.

- 51.4 The parties hereby jointly establish a goal of increasing the number of employees by twenty (20%) percent who voluntarily remain in the same assignment and shift for at least twelve (12) months, within the next two rotations.
- 51.5 A Labor-Management Committee shall be established to identify and discuss ways to increase the length of time employees remain on a shift and in a given assignment. Further the Labor-Management Committee shall discuss and evaluate acceptable methods for reducing staff turnover in assignments which impact Community Policing, including such concepts as "shift within shift" (i.e., changes by exception during longer assignments), ways to address the personal disadvantages of longer assignments and other matters related to the length of shift rotations.
- 51.6 At its own expense, the POA shall provide printed material such as public education brochures on Community Policing for distribution to the residents and businesses in San Jose. Such printed materials shall be found acceptable by the Police Chief before distribution.

ARTICLE 52 DRUG TESTING

- 52.1 The Department may implement drug testing for any officers who henceforth apply to the units/assignments listed below.
- 52.2 The tests shall be carried out in the manner described by, and consistent with, the City's Employee Services Department Drug Testing Procedures and the "Substance Abuse Program" that the City has with the San Jose Police Officers' Association (Exhibit II). These documents are hereby incorporated herein by reference.
- 52.2.1 The Doctor-patient privilege shall be maintained concerning the referral procedures of the above-mentioned Substance Abuse Program, including the "gatekeeping" procedures concerning treatment facilities.
- 52.3 As to any officer in the following units assignments: NCI, NET, Vice/Intelligence, MERGE, Bomb, Air Support Unit, the Department may implement random drug testing four months or more after the Rehabilitation Program described in paragraph 52.5 below is implemented.
- 52.4 The testing procedures in such random tests shall be those in paragraph 52.2, above.
- 52.5 The City shall implement for all bargaining unit members the substance abuse rehabilitation plan described in paragraph 52.2 above, and hereby incorporated herein by reference. If implementation is delayed, then the random testing for persons in the affected units/assignments likewise must be delayed.

- 52.6 Effective immediately, all sworn personnel from Lieutenant through the Chief of Police in the chain of command of the units/assignments described above shall be tested as described herein. Thereafter, they shall be part of the random selection pool and shall also be tested upon assignment/rotation into that chain of command.
- 52.7 Testing for anabolic steroids will continue where reasonable suspicion exists. Testing for anabolic steroids as part of the selection process for units/assignments described above shall be discussed in the Labor Management Committee, with implementation to occur upon mutual agreement.
- 52.8 No more than one-third of the affected employees will be randomly tested at intervals any more frequently than four times per year.
- 52.9 The laboratory for testing will be Pharm Chem, presently in Menlo Park.
- 52.10 Effective January 1, 1995, the City will comply with the new Federal regulations requiring random drug and alcohol testing for employees in positions that require special driver's licenses. Should the new Federal regulations exceed the City's current drug screening procedures, the POA will be notified prior to implementation.
- 52.11 During the random selection process, a POA representative shall be present.
- 52.12 This article does not supersede or replace "For Cause" testing, as described in the SJPD Duty Manual.

ARTICLE 53 TIME DONATION PROGRAMS

53.1 Employees may donate accrued vacation and/or compensatory time for credit to another full-time or part-time benefited City employee who qualifies for the Catastrophic Illness Program (CITD) or the Personal Illness Time Donation Program (PITD) as per the appropriate Memorandum of Agreement. Such donations may be made in accordance with the CPM section regarding Time Donation Programs and the following:

53.2 Catastrophic Illness Time Donation (CITD):

53.2.2 Eligibility to Receive Donations

This section shall apply when an eligible City employee must be absent from work for an extended period of time due to a non-job related illness or injury which is medically catastrophic (e.g., the illness/injury is

extremely serious, totally incapacitating, and life-threatening) and the employee has exhausted all paid leave and meets all criteria listed below. CITD leave may be considered leave under the Family Medical Leave Act and/or the California Family Rights Act.

- a. The employee is an active employee (full or part-time benefited) who is eligible for paid leave, and;
- b. The employee has exhausted all paid leave (personal leave, sick leave, vacation, compensatory time and executive leave) or will have exhausted all paid leave by the time donations can be processed, and either;
- c. The employee experiences a non-job related catastrophic illness or injury, which has required him or her to be absent for a period of thirty (30) consecutive or cumulative days or more, within the previous six (6) months. The expected condition and term of absence must be verified by the City's physician in consultation with the employee's treating physician, or;
- d. The eligible employee must show the need to care for an eligible family member who is catastrophically ill. Eligible family members are defined as:
 - 1) A legal spouse or a registered Domestic Partner and is receiving City health benefits
 - 2) A person under 18 years of age, or a person incapable of self-care because of a physical or mental disability who is a biological, adopted, foster or step child, or a ward of the employee
 - 3) A person for whom the employee is charged with a parent's legal rights, duties and responsibilities.

53.2.3 Criteria for Donating Time

To be eligible to donate hours, an employee must meet all of the following criteria;

- a. The donor must have sufficient accrued compensatory and/or vacation time to cover the requested transfer
- b. City employees may voluntarily donate accrued vacation and/or compensatory time either:
 - 1) to a specific eligible employee or

- 2) to a non-specified eligible employee to be utilized by any eligible employee should the need arise

53.2.4 Relationship to Salary Continuation (Long-Term Disability) Insurance

Voluntary donations of paid leave are intended to assist the seriously ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long-term disability) or the SJPOA Insurance and Benefits Trust, donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.

53.2.5 Excess Donated Time

Donated time will be processed in increments of no more hours than the employee can use in a three month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations may not be revoked.

53.2.6 Approval to Receive Donations

The Employee Services Department will review any CITD request submitted and determine whether the process of donation of paid leave may proceed based on the provisions of this section. The City's physician will review documentation of the employee's or eligible family member's medical condition, in consultation with the treating physician, and determine whether or not the condition meets the medical criteria of a catastrophic illness or injury. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Employee Services Department.) No donations will be accepted until the City's physician has qualified the recipient's or his/her family member's condition as medically catastrophic, and the Employee Services Department has verified that all other criteria are met. When CITD designation has been approved, a donation form specifically for the ill or injured employee will be created by Employee Services. The CITD form shall not be distributed prior to specific case approval. The employee or his/her Department Director will designate a CITD Liaison to distribute donation forms and facilitate the acceptance of donated time after CITD designation has occurred.

53.2.7 Approval to Make Donations

Donations cannot be made until the Employee Services Department has determined that the intended recipient employee is eligible to receive

donations. The employee or his/her Department Director will designate a CITD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

53.2.8 Maximum Donation

A recipient employee is eligible to receive a total maximum of 1040 hours of donated leave time during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for Part-time benefited employees.

If an eligible employee exhausts the maximum 1040 hours of donated leave and if the employee's or eligible family member's catastrophic illness or injury prevents the employee from returning to work, the employee or the employee's designee may apply for an increase to the maximum to 2080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through the Office of Employee Relations. The application shall include a recommendation from the Department Director and shall be evaluated based upon the operational impact on the employee's department and subject to the re-verification of the medical condition to determine if the illness or injury still qualifies and prevents the employee from returning to work. The decision of the City Manager regarding an application of an increase to the maximum donated leave is final and is not subject to appeal.

53.2.9 Donations to Non-Specified Employee(s)

Donations to a non-specified employee can be made at any time. Donations designated as non-specified will not be deducted from the donor employee's compensatory and/or vacation leave balances until such time as they have been awarded to an eligible employee. The donation is to be rescinded if donated hours are not converted before the end of pay period 24 of each payroll calendar year. Donor employees may elect to have their unused person-to-person donations designated as non-specific employee donations. Employees requesting donations established as non-specific employee donations shall be utilized on a first come, first served basis. Employees are required to exhaust all of their person-to-person time donations before being eligible for non-specific employee donations.

53.2.10 Method of Converting Donated Hours

Donations may be made in 1/2-hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Employee Services Department on which the donor

specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2 hour, based on the recipient's current pay rate.

53.2.11 Confidentiality

Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential, except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

53.3 Personal Illness/Injury Time Donation (PITD):

53.3.1 Eligibility to Receive Donations

This section shall apply when an eligible City employee must be absent from work due to a non-job related personal illness or injury and the employee has exhausted all paid leave. Employees are eligible for donations for absences of at least one (1) day, up to a maximum of thirty (30) consecutive calendar days immediately following an initial absence of at least thirty (30) consecutive calendar days. Donations to eligible employees under the PITD are limited to no more than what the employee can use in a one-month period (maximum of twenty-two (22) working days) for the same qualifying illness or injury. PITD leave may be considered Family Medical Leave under the Family Medical Leave Act (FMLA). The employee must be an active employee (full or part-time benefited) who is eligible for paid leave. The employee must have exhausted all accrued paid leave (sick leave, vacation, compensatory time, personal leave and executive leave) or will have exhausted all paid leave by the time donations can be processed. Employees who have received donations under the PITD program must wait at least one calendar year before reapplying for PITD donations. The City reserves the right to deny PITD requests.

53.3.2 Criteria for Donating Time

City employees will be able to voluntarily donate accrued vacation and/or compensatory time for transfer to another eligible employee in situations that meet all of the following criteria;

- a. The donor is an active employee (full or part-time benefited) who is eligible for paid leave.
- b. The donor has sufficient accrued compensatory or vacation time to cover the requested transfer.

53.3.3 Relationship to Salary Continuation (Long-Term Disability) Insurance

Voluntary donations of paid leave are intended to assist the ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long-term disability) or the SJPOA Insurance and Benefits Trust, donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.

53.3.4 Excess Donated Time

Donated time will be processed in increments of no more hours than the employee can use in a one month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations transferred to the recipient's sick leave balance may not be revoked.

53.3.5 Approval to Receive Donations

The Employee Services Department shall be provided with medical verification that the employee's condition will require more than thirty consecutive calendar day absence from work. The City reserves the right to request additional medical verification. No donations will be accepted until the Employee Services Department has received this medical documentation and all other criteria are met. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Employee Services Department).

53.3.6 Approval to Make Donations

Donations cannot be made until the Employee Services Department has received medical verification that the employee's illness or injury will require at least a thirty (30) consecutive calendar day absence from work. The employee or his/her Department Director will designate a PITD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

53.3.7 Maximum Donation

A recipient employee is eligible to receive a total maximum donation of leave of the total number of hours that the recipient employee can use in a one month period during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for Part-time benefited employees.

53.3.8 Method of Converting Donated Hours

Donations may be made in 1/2 hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Employee Services Department which specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2 hour, based on the recipient's current pay rate.

53.3.9 Confidentiality

Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential, except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

ARTICLE 54 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer or negotiate on the Article or subsections thereof affected. If they are unable to come to an agreement on the matter, the provisions of Section 1111 of the Charter shall apply. All other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 55 MEET AND CONFER AND INTEREST ARBITRATION

The meet and confer process between the City and the Police Officers' Association shall be conducted in accordance with the following procedures:

- 55.1 Meet and Confer. The goal of the meet and confer process is to reach a voluntary settlement which adequately addresses the interests of both parties. The parties shall be committed to conducting the process in good faith, treating all participants with respect and honoring each others' time by providing advance notice of scheduled and cancelled meeting dates.
- 55.2 Mediation. In the event impasse is declared regarding contract negotiations for a new MOA, the parties will participate in mediation prior to arbitration in an attempt to resolve the dispute. However, the parties shall arrange for an arbitrator and schedule arbitration dates in advance (arbitration shall be conducted in accordance with City Charter section 1111). If the mediation process has not been completed within a 90-day period, beginning with the first day of impasse as determined by written notification of impasse by either party, either party may proceed to arbitration. If the parties do not proceed to arbitration, the arbitrator shall be cancelled.
- 55.3 If the parties remain at impasse following mediation, the POA may choose to make a presentation during a public City Council meeting without the requirement of a Council response.

ARTICLE 56 PROBATIONARY PERIOD

- 56.1 With respect to the method for calculating the end of the probationary period for employees within the SJPOA bargaining unit, vacation time, sick time, disability leave, lost time, and all other periods of absence with or without pay shall *not* be considered to be part of the employee's service to the City and shall *not* count toward the calculation of the employee's probationary period except as specified in 56.3 below.
- 56.2 Time spent on modified/light duty shall not count toward calculation of the employee's probationary period, other than employees serving a promotional probationary period in the classification of Sergeant and above who are in permanent modified duty positions.
- 56.3 Compensatory time off that is mandated in writing by the City pursuant to Section 13.6.5 of the Memorandum of Agreement shall be deemed to be part of the employee's service to the city and shall count toward the calculation of the employee's probationary period. Additionally, voluntary approved compensatory "time off", up to and including eighty (80) hours in the aggregate, whether taken in sort or extended increments shall be deemed to be part of the employee's probationary period. Any and all voluntary approved compensatory "time off" in excess of eighty (80) hours shall *not* be considered to be part of the employee's service to the City and shall *not* count toward the calculation of the employee's probationary period.

56.4 The City agrees to indemnify the Association as to any liability arising solely from the implementation of Section 56.2. The indemnification also extends to the act of Association's cooperation in the defense of this section before an forum.

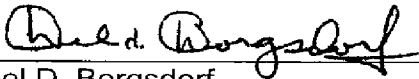
The City will not indemnify the Association for any liability caused by separate acts or omissions independent of the acts described in Section 56.2. For example, the City would not indemnify the Association if the Association is found liable for misrepresentations or nondisclosures to its membership, or liable for any breach of duty of fair representation other than a breach predicted solely on the acts or omissions described in Section 56.2.

The City will not pay attorneys' fees to or on behalf of the Association but at the sole option of the Association, the City Attorney's Office will defend the Association against claims or lawsuits arising from the implementation of Section 56.2 so long as the Association waives any conflict of interest, actual or potential, arising out of representation by such counsel. However, legal counsel for the City shall keep Association informed of all developments particularly as to any possible settlement of the dispute/litigation. The Association shall have the right to participate in the defense.

The City's obligation to indemnify, as described above, is conditioned upon the City having primary authority for the defense. The Association and the City attorneys shall cooperate in the defense of the case. The Association may not agree to any settlement involving its financial liability without consent of the City.

THIS AGREEMENT executed on the **7th day of December, 2005** between the City of San Jose and the San Jose Police Officers' Association, in WITNESS thereof, the appropriate representative if the parties have affixed their signature thereto.

For the City of San Jose:



Del D. Borgsdorf
City Manager



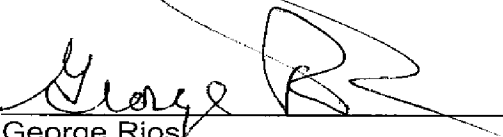
Alex Gurza
Director of Employee Relations



Gina Donnelly
Employee Relations Manager

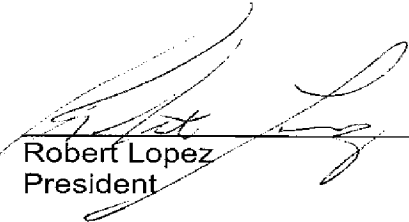


Tuck Younis
Assistant Chief of Police

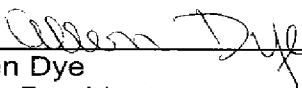


George Rios
Assistant City Attorney

**For the San Jose
Police Officers' Association:**




Robert Lopez
President



Allen Dye
Vice President



Jeff Ricketts
Chief Financial Officer



Brian Simuro
Director

EXHIBIT I

Biweekly Salaries Effective 03/01/04

Job Code	Job Title	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
2414	Airport Police Officer	\$2,192.00	\$2,302.40	\$2,416.00	\$2,538.40	\$2,664.00		
2214	Police Recruit	\$2,192.00						
2215	Police Officer	\$2,304.80	\$2,418.40	\$2,540.00	\$2,665.60	\$2,801.60	\$2,940.00	\$3,086.40
2216	Police Sergeant	\$2,940.00	\$3,086.40	\$3,241.60	\$3,404.00	\$3,573.60		
2244	Police Artist	\$2,940.00	\$3,086.40	\$3,241.60	\$3,404.00	\$3,573.60		
2217	Police Lieutenant	\$3,404.00	\$3,573.60	\$3,752.00	\$3,940.00	\$4,138.40		
2218	Police Captain	\$3,940.00	\$4,138.40	\$4,344.80	\$4,560.80	\$4,788.80		
2219	Deputy Chief of Police	\$4,560.80	\$4,788.80	\$5,029.60	\$5,280.80	\$5,544.80		

Biweekly Salaries Effective 07/03/05

Job Code	Job Title	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
2414	Airport Police Officer	\$2,224.80	\$2,336.80	\$2,452.00	\$2,576.80	\$2,704.00		
2214	Police Recruit	\$2,224.80						
2215	Police Officer	\$2,339.20	\$2,454.40	\$2,578.40	\$2,705.60	\$2,844.00	\$2,984.00	\$3,132.80
2216	Police Sergeant	\$2,984.00	\$3,132.80	\$3,290.40	\$3,455.20	\$3,627.20		
2244	Police Artist	\$2,984.00	\$3,132.80	\$3,290.40	\$3,455.20	\$3,627.20		
2217	Police Lieutenant	\$3,455.20	\$3,627.20	\$3,808.00	\$3,999.20	\$4,200.80		
2218	Police Captain	\$3,999.20	\$4,200.80	\$4,409.60	\$4,629.60	\$4,860.80		
2219	Deputy Chief of Police	\$4,629.60	\$4,860.80	\$5,104.80	\$5,360.00	\$5,628.00		

EXHIBIT I

Biweekly Salaries Effective 07/02/06

Job Code	Job Title	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
2414	Airport Police Officer	\$2,352.00	\$2,469.60	\$2,592.00	\$2,724.00	\$2,858.40		
2214	Police Recruit	\$2,352.00						
2215	Police Officer	\$2,472.80	\$2,594.40	\$2,725.60	\$2,860.00	\$3,006.40	\$3,154.40	\$3,311.20
2216	Police Sergeant	\$3,154.40	\$3,311.20	\$3,477.60	\$3,652.00	\$3,833.60		
2244	Police Artist	\$3,154.40	\$3,311.20	\$3,477.60	\$3,652.00	\$3,833.60		
2217	Police Lieutenant	\$3,652.00	\$3,833.60	\$4,024.80	\$4,227.20	\$4,440.00		
2218	Police Captain	\$4,227.20	\$4,440.00	\$4,660.80	\$4,893.60	\$5,137.60		
2219	Deputy Chief of Police	\$4,893.60	\$5,137.60	\$5,396.00	\$5,665.60	\$5,948.80		

Biweekly Salaries Effective 07/01/07

Job Code	Job Title	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
2414	Airport Police Officer	\$2,486.40	\$2,610.40	\$2,740.00	\$2,879.20	\$3,021.60		
2214	Police Recruit	\$2,486.40						
2215	Police Officer	\$2,613.60	\$2,742.40	\$2,880.80	\$3,023.20	\$3,177.60	\$3,334.40	\$3,500.00
2216	Police Sergeant	\$3,334.40	\$3,500.00	\$3,676.00	\$3,860.00	\$4,052.00		
2244	Police Artist	\$3,334.40	\$3,500.00	\$3,676.00	\$3,860.00	\$4,052.00		
2217	Police Lieutenant	\$3,860.00	\$4,052.00	\$4,254.40	\$4,468.00	\$4,692.80		
2218	Police Captain	\$4,468.00	\$4,692.80	\$4,926.40	\$5,172.80	\$5,430.40		
2219	Deputy Chief of Police	\$5,172.80	\$5,430.40	\$5,703.20	\$5,988.80	\$6,288.00		

EXHIBIT II

SUBSTANCE ABUSE PROGRAM

The purpose of the Substance Abuse Program is to provide guidelines for self-referral and rehabilitation options for employees that may be experiencing a problem with alcohol and/or drug use as well as "for cause" alcohol/drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees.

It is the policy of the City of San Jose to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San Jose.

Application

A. Personnel

1. Full-time and permanent, benefited part-time employees represented by: San Jose Police Officers' Association.

B. Substances

1. alcohol;
2. illegal drugs; and
3. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

Policy

It is the policy of the City that employees:

- shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;

- while on duty shall not use, possess, sell or provide drugs or alcohol;
- shall not have their ability to work or be paid stand-by impaired as a result of the use of alcohol or drugs.

An employee is required to notify his/her supervisor when any medications or drug he/she is taking create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Employee Services for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs, as described under the Management Responsibilities and Guidelines Section, paragraph B, shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy shall be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination which alone will form a basis for discipline.

Employee Responsibilities

An employee must:

- A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;
- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;

- D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a department director and may request union representation;
- E. notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

Management Responsibilities and Guidelines

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A department director or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

1. A pattern of documented abnormal or erratic behavior;
2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and the Union;
3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
4. A work related accident in conjunction with other facts which together support reasonable cause.

- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to requesting an employee to submit to a drug and/or alcohol analysis. If the employee requests union representation, the employee will be allowed the opportunity to secure such representation. If an employee believes an employee not under his supervision has a problem and should be tested or referred, he/she should contact the **Office of Employee Relations (OER)** who will notify the Department Director or authorized representative. Should the Department Director or authorized representative concur that the employee appears to be in violation of the policy, the following procedures shall immediately be applied:
1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs. This information shall be stated on the Investigation Documentation Memorandum (IDM).
 2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Health Services or after-hours facility where a drug and/or alcohol test will be requested.
 3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
 4. Managers and supervisors shall not physically search employees.
 5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.
 6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
 7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.
- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may

subject the employee to disciplinary action. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

E. Demands for drug or alcohol analysis by supervisors or managers, which are determined to be malicious or vexatious will not be tolerated and will subject the directing individual to disciplinary action.

F. Results of Drug and/or Alcohol Analysis:

1. Upon a negative result, the employee shall return to work if otherwise fit for duty.

2. If the test result is positive, the following shall apply:

First Offense: In an effort to encourage the employee to take responsibility for his/her problem, first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct. Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty (30%) percent of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby or any action constituting a violation of this policy will continue to be subject to discipline, subject to applicable due process for City employees.

3. **Second Offense:** During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, , subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost.

4. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

Confidentiality

Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a department director or authorized representative and Employee Services Director on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed

at issue in a formal dispute between the employer and employee; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by the City's Employee Health Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels defined in the City of San Jose Substance Abuse Program and Policy Drug Minimum Detection Levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment

The City will make substance abuse treatment available to employees represented by the San Jose Police Officers' Association in the following way:

1. Self Referral

- A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at EAP.
- B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The EAP will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
- C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

2. Formal Referrals

- A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the EAP and define issues.
- B. The employee will be advised to go to the EAP for evaluation. Any participation in treatment is voluntary.
- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

- A. If an employee tests positive on a drug test the department director or authorized representative will contact the EAP and initiate a formal referral. An evaluation by the EAP is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the EAP to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

4. Settlement of a Proposed Discipline

- A. If an employee has received a Notice of Intended Discipline (NOID) for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.
- B. The specific terms of the agreement are determined on a case-by-case basis. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.

5. Funding

The employee will pay thirty (30%) percent of treatment costs for a plan approved by the EAP for the employee. The city will pay the remainder of the cost, which is not covered by the employee's health insurance for one treatment.

Promotional Memorandum of Agreement

City of San José

and

San José Police Officers' Association



March 1, 2004 – June 30, 2008

**PROMOTIONAL MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
&
THE SAN JOSE POLICE OFFICERS' ASSOCIATION**

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The Memorandum of Agreement for Promotions hereinafter referred to as the "Agreement" is established by agreement at San José, California, this 25th day of October, 2005 by and between the City of San José, California, hereinafter referred to as the "City" and the San José Police Officers' Association, hereinafter referred to as the Employee Association or "Association." This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, including grievance settlements and arbitration decisions interpreting those understandings, are hereby superseded and terminated in their entirety. The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown-Act."

ARTICLE 1 TERM

This Promotions Memorandum of Agreement shall become effective March 1, 2004, except where otherwise provided, and shall remain in effect through June 30, 2008. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

ARTICLE 2 NON-DISCRIMINATION

The Parties agree that they and each of them shall not discriminate with respect to promotions against any employee or organization member in accordance with the City of San Jose Discrimination and Harassment policy, Section 1.1.1 of the City Policy Manual and/or any applicable State or Federal laws.

ARTICLE 3 ELIGIBILITY

- 3.1 To qualify for an examination for Police Sergeant, an individual must have at least three (3) years experience as a Police Officer for the City of San Jose.
- 3.2 To qualify for an examination for Police Lieutenant, an individual must have at least two (2) years experience as a Police Sergeant for the City of San Jose.
- 3.3 To qualify for an examination for Police Captain, an individual must have at least two (2) years experience as a Police Lieutenant for the City of San Jose.
- 3.4 To qualify for an examination for Deputy Chief of Police, an individual must currently hold the position of Police Captain and have at least two (2) years experience as a Police Lieutenant for the City of San Jose.

ARTICLE 4 EXAMINATION NOTIFICATIONS

- 4.1 Public notice of upcoming test shall be posted no later than sixty (60) days before test date.
- 4.2 There shall be no extension of the applicant filing date or test date unless announced to all potential candidates.

- 4.3 The City shall provide, no less than one time every calendar year, a promotional counseling session available to all Police Officers seeking advice on how best to prepare for their specific promotional testing process. Officers may participate on their own time.

ARTICLE 5 EXAMINATIONS

- 5.1 Booklets containing test questions shall be officially numbered in sequence with test answer sheets containing the same number. Candidates taking an exam shall be given a test booklet and answer sheet identified with identical numbers.
- 5.2 All questions used in all written examinations shall have their source listed in parenthesis under questions on exams.
- 5.3 With respect to Sergeant and Lieutenant examinations, questions on the written examination will be based upon the content of the departmental reading list if a written examination is given as part of that promotion process.
- 5.4 The weights of the Sergeant examination will be 50% written and 50% oral. The oral examination will include a writing exercise component, which will account for 5% of the candidate's total score.
- 5.5 The City may use more than one oral board for an examination.
- 5.6 The use of audio-taping or videotaping may be implemented in the "Oral" portion of an examination. If any candidate is recorded, all candidates shall be similarly recorded; that is, there shall be uniformity in the process. In addition, there shall be four (4) week written notice to all candidates of such recordation. Notice of taping/recordation in the exam announcement shall suffice.
- 5.7 The Sergeant and Lieutenant oral boards should represent the diversity of the workforce. If the oral board elected through the participants' voting process fails to do so, the Chief may elect to appoint an extra member of each board. In that event, the Sergeant boards will have a maximum of five (5) raters and the Lieutenant boards will have a maximum of four (4) raters.
- 5.8 The Sergeant and Lieutenant oral board will include a representative from the Office of Employee Relations or the Employee Services Department as an observer.
- 5.9 For oral board rater selection for promotional examinations for Sergeants and Lieutenants, the examinees shall elect two raters from Lieutenants and/or Captains in the San Jose Police Department and the Director of Employee Services shall appoint two additional raters whom can be any persons who he/she deems appropriate.
- 5.10 For examinations for Sergeant, Lieutenant and Captain, an observer designated by the Association, who is not an employee of the City of San Jose, may be present during pre-examination training of oral board members, the oral board itself and discussion by oral board raters, if any, to coordinate their scores.

- 5.10.1 The observer shall report to the City and the Police Officers' Association examination process irregularities, if any, which appear to be a violation of the City of San Jose Harassment and Discrimination policy and/or other applicable State and/or Federal laws. To do so, the observer first reports such perceived irregularities to the examination administrator designated by the City by the conclusion of the examination phase in which the alleged irregularity occurs. If that concern continues, the observer shall promptly report the concern to the Office of Employee Relations.
- 5.10.2 If no irregularity is presented by the end of an examination phase, the observer may not raise an issue solely related to that examination phase at any later time with respect to discrimination. The observer shall not be concerned with or report on the content of an examination. With respect to oral examinations in which there are exercises that are being carried out simultaneously among different examinees, and if the observer cannot watch more than one such exercise without disrupting it, then the observer will watch but one exercise at a time.
- 5.10.3 The observer shall not talk, disrupt, provide clues to any candidate or rater during the examination process, interrupt proceedings in progress or otherwise disrupt the examination process. The observer shall at all times protect the confidentiality of the examination content and candidates' performance except with regard to reports to the parties herein.
- 5.10.4 The observer at the conclusion of the examination process will make a report concerning the examination, and any recommendations the observer may have, jointly to the City and to the Association.
- 5.10.5 The Association will arrange for the presence of its selected observer, including payment, if any is required. The schedule for the examination will not be affected by the ability or inability of the observer to be present.

ARTICLE 6 EXAMINATION PROTESTS

- 6.1 During the protest period of seven (7) calendar days, candidates may view a keyed copy of the test booklet. (Candidates will be allowed an initial key review of two (2) hours by the Wednesday following a Saturday written test. Additional time will be provided as requested within the seven-day period during normal office hours.)
- 6.2 Protest Review Meeting (Optional)
- 6.2.1 The Employee Services Director or designee will discuss protests with all interested candidates. The Employee Services Director or designee will indicate a tentative resolution at the Protest Review Meeting.
- 6.2.2 The Employee Services Director or designee shall prepare a letter to each candidate indicating the Employee Services Director's determination. Candidates have five (5) business days to appeal in writing to the Civil Service Commission.

- 6.2.3 All appeals must be filed in writing, within five (5) business days of receipt of the letter from Employee Services.
- 6.2.4 City Clerk will notify appellant of the date, time and place of the meeting. The meeting will be held within ten (10) calendar days of the final day an appeal may be filed.

ARTICLE 7 PROMOTIONAL SELECTIONS

- 7.1 Promotion lists shall be maintained for two (2) years. At the discretion of the Director of Employee Services the life of a list may be extended for an additional year.
- 7.2 The Director of Employee Services shall make every reasonable effort with respect to Sergeant and Lieutenant list(s) to provide a new list within 90 days of the exhaustion or expiration of the Sergeant and/or Lieutenant list(s).
- 7.3 The "Rule of 10" will apply in all promotions.
- 7.4 For the purposes of seniority, points added to test scores for placement on all Police promotional eligible lists, seniority points will be based solely on time in the qualifying grade.
- 7.5 In the event that a person on a list is passed over for the second certification off that same list, in that someone listed below that person was appointed instead of the individual, then the person shall, on request, meet with the Chief or designee to discuss the specifics as to why the individual was passed over, and to receive suggestions as to what the individual can do that will enhance his or her chances for future promotion selection.

ARTICLE 8 DISPUTES

Any disputes concerning the interpretation or application of this agreement shall be resolved by the grievance procedures set forth in the Memorandum of Agreement between the City of San José and San José Police Officers' Association.

ARTICLE 9 PROBATIONARY PERIODS

For those persons promoted to the rank of Sergeant or above, the probationary period will be twelve (12) months.

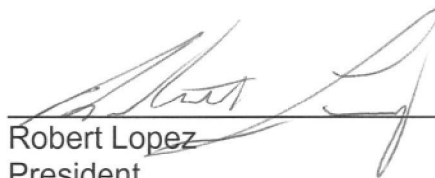
THIS AGREEMENT executed on the 25th day of October, 2005 between the City of San José and the San José Police Officers Association, in WITNESS thereof, the appropriate representative if the parties have affixed their signature thereto.

For the City of San José:

For the San José Police Officers' Association:



Alex Gurza
Director of Employee Relations



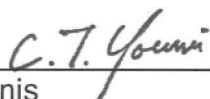
Robert Lopez
President



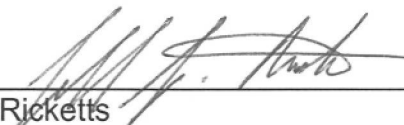
Gina Donnelly
Employee Relations Manager



Allen Dye
Vice President



Tuck Younis
Assistant Chief of Police



Jeff Ricketts
Chief Financial Officer