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Title: **San Jose, City of and Municipal Employees Federation, American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO, Local 101 (2004) (MOA)**

K#: **810012**

Location: **CA San Jose**

Employer Name: **San Jose, City of**

Union: **Municipal Employees Federation, American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO**

Local: **101**

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Memorandum of Agreement

City of San José

and

Municipal Employees' Federation (MEF)
AFSCME Local No. 101
AFL-CIO



July 1, 2004 – June 30, 2005

MUNICIPAL EMPLOYEES' FEDERATION

2004-2005 MEMORANDUM OF AGREEMENT

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The Memorandum of Agreement hereinafter referred to as the Agreement or MOA is made and entered into at San José, California, this 29th day of June, 2004, by and between the City of San José, hereinafter referred to as the City or Management and the Municipal Employees' Federation, American Federation of State, County, and Municipal Employees (AFSCME), Local No. 101, AFL-CIO, hereinafter referred to as the Employee Organization, Municipal Employees' Federation (MEF), or Union.

For the purpose 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 José and in Part 2 - Definitions of Chapter 3.04 of Title III, of the San José Municipal Code unless it is apparent from the context or from the specific language that a different meaning is intended.

ARTICLE 1 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the Municipal Employees' Federation, AFSCME, Local No. 101, AFL-CIO.

ARTICLE 2 PERIOD OF MEMORANDUM OF AGREEMENT

- 2.1 This Agreement shall become effective July 1, 2004 except where otherwise provided, and shall remain in effect through June 30, 2005. 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. Copies of this Agreement, as originally executed, shall be printed in a number sufficient to provide one copy for each employee represented by the Union, and distributed as soon as practical. The costs of such printing shall be shared equally by the parties, unless the printing of such Agreements are reproduced utilizing City facilities, in which case the City shall bear the cost of such printing.
- 2.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the Union shall exert every reasonable effort to submit any proposed changes or additions to this Agreement on or before April 1, 2005. The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

ARTICLE 3 AGREEMENT CONDITIONS

3.1 Full Understanding, Modification And Waiver

- 3.1.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 3.1.2 Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San José Municipal Code shall be continued without change during the term of this Agreement. Such

existing benefits, which are referenced in the Agreement, shall be provided in accordance with the terms of the Agreement.

- 3.1.3 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.
- 3.1.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.
- 3.2 Separability. Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof shall become invalid by law or any benefits provided by this Agreement impose additional obligations on the City by law, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.
- 3.3 Concerted Activity. It is understood and agreed that:
 - 3.3.1 Participation by any employee represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San José for employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work, shall subject the employee to disciplinary action up to and including discharge.
 - 3.3.2 If the Union, its officers or its authorized representatives violates provision 3.3.1 above or tolerate the violation of provision 3.3.1 above and after notice to responsible officers or business representatives of the Union, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 3.3.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Union shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer or designee, may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Union, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer or designee shall not be subject to review under the provisions of Article 21, Grievance Procedure.
- 3.4 Non-Discrimination
 - 3.4.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition or disability. The parties further agree that this Section 3.4.1 shall not be subject to the Grievance Procedure provided in this Agreement.

- 3.4.2 The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union. The parties further agree that this Section 3.4.2 may be subject to the Grievance Procedure provided in this Agreement.

ARTICLE 4 RECOGNITION

- 4.1 Pursuant to Resolution No. 39367 of the City Council of the City of San José and the provisions of applicable state law, the Municipal Employees' Federation, AFSCME, Local No. 101, AFL-CIO, hereinafter referred to as the Employee Organization or Union is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in the Exhibits attached and incorporated by reference into this Agreement. The classifications listed in the Exhibits and subsequent additions thereto or deletions therefrom shall constitute an appropriate unit.
- 4.2 The City agrees to meet and confer with the Union prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

ARTICLE 5 MANAGEMENT RIGHTS

- 5.1 Except to the extent that the 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 any law or the City Charter, including, but not limited to: The right to direct the work force; increase, decrease or re-assign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.
- 5.2 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 employees affected or the Union.

ARTICLE 6 UNION RIGHTS

- 6.1 Authorized Representatives
- 6.1.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:
- 6.1.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or a duly authorized representative except where a particular Management representative is otherwise designated.

6.1.2 The Union's principal authorized agent shall be the President, or duly authorized representatives.

6.2 Release Time

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

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

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

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings.
- To attend grievance meetings when used to facilitate settling of grievances.
- To attend Benefit Review Forum meetings (up to two (2) designated representatives).
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations (up to two (2) designated representatives).
- To attend meetings scheduled by Administration when attendance is requested.
- To attend other meetings and trainings approved by the Employee Relations Manager, or designee.

The designated representative may be the Union President or another designated representative for functions allowing for one (1) representative to attend, and may be the Union President and one additional representative or two (2) designated representatives for meetings allowing for up to two (2) attendees.

6.2.2.2 Chief Steward. The Chief Steward and/or designated representative(s) shall be granted release time from regular City duties to attend the following functions:

- To attend grievance meetings when used to facilitate the settling of grievances.
- To attend other meetings and trainings approved by the Employee Relations Director or designee.

6.2.2.3 Department Stewards. Department Stewards shall be granted release time from regular City duties to attend the following functions:

- To investigate and/or process a grievance only on the shift in the department(s) or section of a department(s) for which designated.
- To attend other meetings and trainings as approved by the Employee Relations Director or designee.

6.2.2.3.1 Department Steward Authority. A Department Steward shall function under the terms of the grievance procedure and only on the shift and in the department(s) or sections of a department(s) designated. Exceptions to this section may be made by mutual agreement of the parties.

6.2.2.3.2 Ratio of Department Stewards. Department Stewards shall be designated in the ratio of approximately one (1) Steward for every fifty (50) full-time equivalent (FTE) positions in the representation units. Shift and geographical locations may require an adjustment to the above ratio as approved by the Employee Relations Director or designee and the Union.

6.2.2.3.3 The Union shall designate as Stewards only full-time or part-time benefited employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.

6.2.2.3.4 In the event the parties agree that a Steward or other representative of the Union is permitted to investigate and/or process a grievance other than as provided in 6.2.2.3.1 above, such representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.

6.2.3 Authorization For Release Time. If the designated Union representative finds it necessary to leave assigned duties to investigate or process a grievance, or attend a meeting as defined in this Article, the representative must inform the immediate supervisor of the general nature for the release time and receive authorization from the immediate supervisor prior to leaving assigned duties. Upon return to assigned duties, the representative must report back to the immediate supervisor.

6.2.3.1 Outside Department. If it is necessary for a Steward or Officer to handle a grievance in a department other than the regularly assigned department, the Steward or Officer shall report to the immediate supervisor of the aggrieved employee, the employee involved in the grievance, or the function being investigated.

6.2.3.2 Reasonable Release Time. Authorization for a Union representative, as defined above, to leave assigned duties shall not be unreasonably withheld by the supervisor.

6.2.3.3 Processing Grievances During Regular Work Hours. Although grievances may be investigated and/or processed during normally scheduled working hours, the Union agrees that the time spent by its designated representatives shall be kept to a minimum and that

no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees it will not process grievances during periods of overtime.

- 6.2.4 Notification. The Union agrees to notify the Employee Relations Manager, or designee, in writing of any changes of Officers or Stewards within thirty (30) days of such change.
- 6.2.5 Release Time For Steward Training. The Chief Steward and Department Stewards shall be granted a maximum of eight (8) hours paid release time during each calendar year to participate in training sessions related to the provisions of this agreement, jointly conducted by Union and City representatives according to an outline of such training activities to be submitted by the Union to Employee Relations for approval a minimum of twenty-one (21) calendar days prior to the training session. In addition, each calendar year, newly appointed Stewards shall be granted an additional eight (8) hours paid release time to participate in basic training sessions conducted by Union and City representatives. If no jointly conducted trainings are offered in a particular calendar year, the Union may elect to rollover the allotted release time hours to the following year allowing up to sixteen (16) hours of paid release time for participation in training sessions.
- 6.2.6 The City will provide up to two (2) hours of paid release time per month for up to eight (8) Officers, Stewards, or MAT Captains designated by the Union for the purpose of attending the Union's monthly Stewards' meeting. A list of the designated employees shall be provided to the Office of Employee Relations at least five (5) working days in advance of the scheduled meeting.
- 6.2.7 Release Time Restrictions. Release time shall not be provided for lobbying or political purposes. Release time is provided only to the extent that any employee is required or authorized to attend meetings, trainings or other authorized events during said employee's normal work schedule/hours. Employees are not entitled to receive over-time or regular compensation for attendance of meetings, trainings or other authorized events occurring outside of their normal work schedule/hours.
- 6.3 Maintenance Of Membership (General Supervision Employees, Union Code 052/07 Only)
- 6.3.1 Except as otherwise provided herein, each employee who, on July 1, 2004, is a member in good standing of the Union 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 Union as a condition of retaining membership.
- 6.3.2 Any employee who, on July 1, 2004, is not a member of the Union, nor any person who becomes an employee after July 1, 2004, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Union shall thereafter maintain such membership for the duration of the Agreement, except as otherwise provided herein.

- 6.3.3 Any employee who, on July 1, 2004, was a member of the Union, and any employee who subsequently becomes a member may during the period beginning June 1, 2005 through June 30, 2005, resign such membership, and thereafter, shall not be required to join as a condition of employment. Resignation shall be in writing addressed to the City's Municipal Employee Relations Officer, or designee, with a copy to the Union.
- 6.3.4 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.
- 6.4 Agency Fee (General Miscellaneous Employees, Union Code 051/05 Only)
- 6.4.1 Employee Rights
- 6.4.1.1 The City and the Union recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.
- 6.4.1.2 Accordingly, membership in the Union shall not be compulsory. An employee has the right to choose, either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 6.4.6 below.
- 6.4.2 Employee's Obligation to Exclusive Representation. An employee who is a member of the Union on July 1, 2004, and any employee who becomes a member after July 1, 2004, shall maintain such membership, except as provided during the change of status period set forth in Section 6.4.2.4 below.
- 6.4.2.1 Any person who becomes an employee on or after August 12, 1984, must, within 30 days after their employment, submit to the City either:
1. A signed authorization to deduct dues as a member of the Union; or
 2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 6.4.6.1 below. In this case the employee must designate a charity from Section 6.4.6.2 to which the appropriate amount will be paid through payroll deduction.
- 6.4.2.2 If a person fails to make any of the designations set forth above within the 30 day period, they will be given notice by the City that the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the Union agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Union in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Union.

- 6.4.2.3 During the period June 1, 2005 through and including June 30, 2005, any employee who is a member of the Union may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Article.
- 6.4.2.4 Upon the return from leave of absence of any employee or upon the recalling of an employee from layoff status on or after July 1, 2001, the employee's options under this Article will be determined by their original date of hire.
- 6.4.2.5 The parties expressly agree that the authority granted the Municipal Employee Relations Officer, or designee, under the Concerted Activity Article of this contract, to cancel payroll deductions in the event of a concerted activity extends to the cancellation of Agency Fee and dues deductions.
- 6.4.2.6 The Union specifically agrees that the provisions of Section 6.4.7 of this Article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of an Agency Fee.
- 6.4.3 Definition of Agency Fee. The Agency Fee collected from non-member bargaining unit employees pursuant to Section 6.4.2 of this Agreement shall be limited to the Union (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Union as the Agency Fee.
 - 6.4.3.1 The Union certifies that this "representation fee" includes only those costs actually incurred by the Union in representing employees, who are not also members of the Union, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Union fines, back dues, initiation fees, or any other charge required as a condition of Union membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Union in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union specifically agrees that the provisions of Section 6.4.7 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.
- 6.4.4 Part-time Unbenefited Employees. All part-time unbenefited employees hired on or after August 12, 1984, are subject to the provisions of this Article.
- 6.4.5 Annual Verification of Agency Fee by Union. The Union shall submit to the City a detailed written financial report of its financial transactions in the form

of a balance sheet and an operating statement, certified as to accuracy by the Union's Treasurer. Each year such reports shall be verified and submitted in writing to the City by the Union within sixty (60) days of July 1.

6.4.6 Employees Exempted From Obligation to Pay Union.

6.4.6.1 Any employee shall be exempted from the requirements of Section 6.4.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.

6.4.6.2 Such exempt employee shall, as an alternative to payment of an Agency Fee to the Union, pay an amount equivalent to such Agency Fee to either:

- a. The United Way; or,
- b. Combined Health Appeal (C.H.A.); or,
- c. Any charity jointly agreed upon by the City and the Union. Such charities cannot be affiliated in any manner with the Union, nor can such charity be related to an established religious organization.

6.4.7 Hold Harmless. The Union shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

6.4.8 Expiration Date of Agency Fee Provisions. It is agreed and understood by the parties to this Agreement that the provisions, rights and obligations herein pertaining to payment of any Agency Fee and dues deduction shall not survive beyond the term of this Agreement, and shall accordingly expire on June 30, 2005. As such, the City will no longer collect or transmit dues to the Municipal Employees' Federation beyond the date of expiration of this agreement. However, pursuant to Government Code Section 3502.5, this Article 6 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least thirty percent (30%) of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

6.5 Dues Deduction

6.5.1 The City will deduct from the pay of each employee covered by this Agreement, while such employee is assigned to a classification included in a representation unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.

- 6.5.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee from time to time by the designated Officer of the Union as regular monthly dues.
- 6.5.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated Officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty-one (21) days following the pay period in which the deductions were made.
- 6.5.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer or designee on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 6.5.5 If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 6.5.6 It is expressly understood and agreed that the Union will refund to the employee any Union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 6.5.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.

6.6 Bulletin Board

- 6.6.1 Recognized employee organizations may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Union is recognized.
- 6.6.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
 - 6.6.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer or designee.
- 6.6.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee who shall have the sole and exclusive right to order the removal of any objectionable material.
- 6.6.4 The Municipal Employee Relations Officer or designee shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.

- 6.6.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 6.6.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.
- 6.7 Advance Notice
- 6.7.1 Whenever the City changes work rules or work place policies, or issues new work rules or work place policies, the Union will be given written notice at least ten (10) working days, absent emergency, before the effective date of the rule or policy. This notice is provided in order that the Union may discuss the rule or policy with the City before they become effective if the Union so requests.
- 6.7.2 In cases of emergency when the City Council, City Manager or Department Director determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice, City management shall provide such notice at the earliest practical time.
- 6.8 New Employee Orientation. The City shall provide designated MEF representative(s) reasonable access to new employees during the quarterly new employee orientations to provide information on MEF. Attendance at any presentations by MEF shall be voluntary on the part of the new employee. The Employee Services Department shall work out arrangements with designated MEF representatives.
- 6.9 Employee Lists. The City shall provide at no charge to the Union, a monthly printout listing bargaining unit employees by department and position, full-time equivalency, and employee address. The City shall also provide at no charge to the Union, a quarterly printout listing bargaining unit employees alphabetically by employee address, position title, employment date, full-time equivalency, and leave of absence status. The Union agrees that such information will be treated in a confidential manner.

ARTICLE 7 HOURS OF WORK AND OVERTIME

- 7.1 The work week shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 midnight the following Saturday.
- 7.2 The work day, for pay purposes, shall be a twenty-four (24)-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 7.3 The normal work schedule shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period of at least thirty (30) minutes, Monday through Friday. Insofar as is possible, lunch periods shall be scheduled in the middle of the shift. The length of any lunch period is subject to supervisory approval.
- 7.4 The work period for purposes of the Fair Labor Standards Act may be designated for each employee as appropriate so that there is no overtime built into the regularly scheduled workweek.
- 7.5 The City may establish a work schedule other than Monday through Friday where the interests of, or service to, the public requires. Employees assigned to a five (5) day, eight (8) hour schedule or to a schedule including nine (9) hour days shall be given two (2) consecutive days off, and, employees assigned to a four (4) day, ten (10) 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 (2) or three (3) consecutive days off, whichever is applicable. As an alternative to consecutive days off, an employee may work a schedule without consecutive days off when the schedule is mutually agreed upon between the department and the employee. Such agreements may be rescinded by the employee or the Department with reasonable notice to the employee or Department.

7.6 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.

7.7 Rest Period Full-time Employees. A fifteen (15)-minute rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

7.7.1 Rest Period Part-time Employees. Part-time employees will be provided a fifteen (15)-minute rest period during each uninterrupted work period of at least four (4) hours.

7.7.2 Lunch periods for Part-time Employees. Part-time employees who are scheduled and/or work a shift of six (6) or more hours shall take at least a thirty (30) minute unpaid lunch period. Insofar as is possible, lunch periods shall be scheduled in the middle of the shift. The scheduling of lunch periods and the length of any lunch period is subject to supervisory approval.

7.8 An employee authorized or required to perform work at home which requires at least 1/2 hour shall be compensated for the time worked to the nearest 1/2 hour at the appropriate rate.

7.9 Part-time Employees

7.9.1 The Department Director or designee, subject to regulation and control by the City Manager or designee, shall determine the number of hours of work per work day and work week for part-time employees. The normal work schedule for part-time employees shall be consistent with the position's designated benefit category as follows:

PT Employee Benefit Level	Work Schedule/Paid Hours
75.0%	30-39 hours per week or 1560-2028 per year
62.5%	25-29 hours per week or 1300-1508 per year
50.0%	20-24 hours per week or 1040-1268 per year
Part-Time Non-Benefited Employees	Less than 20 hours per week or less than 1040 per year

7.9.1.1 Subject to Department Director or designee approval, a part-time employee may be approved to work up to one-

hundred (100) hours per payroll calendar year above the maximum paid hours per year of the position's designated benefit category.

7.9.1.2 A part-time employee may only work in excess of one-hundred (100) hours above the maximum paid hours per payroll calendar year of the position's designated benefit category with approval from the Budget Office and the Office of Employee Relations.

7.9.1.3 If a part-time employee is scheduled and reports to work for a shift which is then cancelled, the employee shall, at the City's discretion, either work a minimum of two (2) hours or be credited with two (2) hours work at the employee's straight time pay rate. If the employee is notified prior to the start of the shift that the shift is canceled, the employee is not entitled to the two (2)-hour minimum.

7.9.2 Part-time Employee Benefits Eligibility

7.9.2.1 As used in this Agreement, the term "regularly scheduled part-time position" shall mean:

7.9.2.1.1 A position within a department designated by the department in writing as requiring at least twenty (20) hours and not more than thirty-nine (39) hours of regularly scheduled work per week on a year round basis for an indefinite period of time, and shall include positions in the classification of School Crossing Guard PT (2441) which are so designated and approved as requiring at least twenty (20) hours per week regularly scheduled work for the entire period when the school is in session.

7.9.2.1.2 Effective October 1, 1999, two (2) or more positions held by the same employee within a department which the department has designated in writing as requiring, together and in total, at least twenty (20) hours and not more than thirty-nine (39) hours of regularly scheduled work per week on a year round basis for an indefinite period of time.

7.9.2.1.3 The inadvertent absence of written designation by a department is not intended to deny eligibility for benefits to employees who would otherwise be eligible.

7.9.2.1.4 The City will review annually to determine whether appropriate levels of benefits are provided to each benefited part-time employee.

7.9.2.1.5 The following criteria will be utilized to determine eligibility for benefited status for part-time non-benefited employees or increases to benefit levels for benefited employees:

- Regularly scheduled assignment at a single facility on an ongoing basis, with work totaling twenty (20) hours per week or more, or regularly scheduled assignments

at multiple facilities, with each assignment ongoing with combined hours worked totaling twenty (20) hours per week or more.

- Continuum of service at the twenty (20) or more hours per week level. (However, it should be noted that employees will not be penalized for a reasonable amount of unpaid days off including any Holiday Closure period wherein the employee's assigned City office/facility is closed for normal business.)
- Work is performed as an ongoing function year round and for an indefinite period of time.
- Work performed is not seasonal in nature.
- Work performed is not impacted by weather conditions (i.e. work hours are not cancelled due to bad weather.)
- At any point of one (1) year of continuous work of twenty (20) hours or more per week, if it is anticipated that the employee will continue such schedule due to vacancies running in the program/facility, an employee may be recommended for temporary benefits for the time period the employee will continue to work the current schedule.

7.9.2.2 Eligible part-time employees will receive benefits as specified in the appropriate sections of this MOA.

7.9.2.3 The scheduled hours pursuant to 7.9.1, may be reduced by a budgetary change to a position, subject to Budget Office approval, or through applicable due process.

7.9.2.4 As used in this Agreement, the term "indefinitely assigned" shall mean an assignment to a regularly scheduled part-time position without limitation of any kind as to duration. Nothing herein contained, however, shall be construed to limit the right of the Department Director or the City Manager or designee, as contained in Section 7.9 of this Agreement, to determine the days of the week and hours of each day when any such part-time non-benefited employee shall be required to work, or whether such part-time non-benefited employee shall work at all.

7.9.2.5 In the event Section 7.9.2.4 is invoked as to whether an employee shall be required to work at all, at the employee's written request, the appropriate department shall provide a reason for its action in writing. The action and the reason given for the action shall not be subject to the grievance procedures of this agreement.

7.10 Reduced Workweek

7.10.1 Eligibility. Full-time employee.

- 7.10.2 Rules. Employee may request a reduced work week for personal or medical reasons. The department's approval is completely discretionary when the request is for personal reasons.
- 7.10.3 When the request is to accommodate an attempt by the employee to return to work from an illness or injury, the department will make reasonable accommodation to facilitate the employee's return to full duty via a reduced schedule which is deemed to be medically appropriate. The employee may be required to provide medical verification for the necessity of a reduced schedule.
- 7.10.4 Compensation. An employee who elects one of the options above shall be paid a salary which equals the hourly rate for the salary range and step to which he/she would otherwise be entitled pursuant to this Agreement times the number of hours actually worked during each biweekly pay period.
- 7.10.5 Process. Each employee electing one of the options specified above shall enter into a written agreement with their department to work under the terms of the voluntary reduced work week schedule elected and approved by the department. The Agreement may be approved for a period of up to six (6) months and may be renewed as long as the schedule is mutually acceptable. Either party may require the return to full time status with reasonable notice.
- 7.10.6 Termination of Agreement. Any voluntary reduced workweek agreement entered into shall terminate immediately upon the effective date of the transfer, promotion, or demotion of the employee entering into such agreement.
- 7.10.7 Non-grievable. Neither the failure of a department to enter into a voluntary reduced workweek agreement with any employee nor the termination by a department of any such agreement, shall be subject to the Grievance Procedure provided in Article 21 of this Agreement.
- 7.10.8 Proration of Benefits. Holiday benefits and the City's contribution for premiums for health, dental, and life insurance shall be prorated from the amount contributed for full time employees, based on the number of hours scheduled, as follows:

a.	35-40 hours	100%
b.	30-34 hours	75%
c.	25-29 hours	62.5%
d.	20-24 hours	50%
e.	Less than 20	None

7.10.8.1 Benefits which accrue on an hourly basis:

- a. Vacation
- b. Sick Leave
- c. Seniority
- d. Retirement (Note that retirement contributions will be deducted as a percentage of salary earned and that service credit will be defined in the applicable San José Municipal Code).

7.11 Alternative Work Schedule

- 7.11.1 The City and the Union agree that the availability of Alternative Work Schedules is a valuable benefit to employees in that it promotes job satisfaction, and is of benefit to the City in that it reduces traffic congestion and demands on limited parking facilities. The use of alternative schedules is encouraged, where it can be accommodated without impairing departmental operations or public service.
- 7.11.2 As an alternate to the normal work schedule assigned by the Department in accordance with Section 7.3, and subject to the concurrence and approval of respective Department Directors, a regular full-time employee may elect to work an alternative work schedule. The following conditions and restrictions apply to all employees electing an alternative schedule.
- 7.11.2.1 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. Unless otherwise specified in this Memorandum of Agreement, alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly period. Examples of schedules which may be elected include:
- Four 10-hour days each week
 - Four 9-hour days and one 4-hour day each week
 - Eight 9-hour days, one 8-hour day, and one day off each biweekly pay period
- 7.11.2.2 No alternative work schedule may be established in which overtime is incurred as a part of the established work schedule either under this agreement or under Federal or State law.
- 7.11.2.3 The alternative 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 alternative schedule may be terminated with reasonable notice.
- 7.11.2.4 It is further understood that any alternative schedule agreement entered into pursuant to the provisions herein, shall terminate immediately upon the date of the transfer, promotion or demotion of the employee.
- 7.11.2.5 Neither the failure of the Department to enter into an alternative schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 21. An employee may have the denial of an alternate work schedule reviewed by the Department Director or designee. The decision of the Department Director or designee shall be final.
- 7.11.2.6 Whenever possible, employees elected and approved for a four (4) day, ten (10) 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 (2) or three (3) consecutive days off, whichever is applicable.

- 7.11.3 Employees assigned to radio dispatch operations in either the Fire or Police Departments may work alternate work schedules, based upon the needs of the department and the need to provide quality service to the public. Due to the critical nature of the position and the restrictions placed upon the employees, any shift of eight (8) hours or greater will include a thirty (30) minute paid lunch break. The work schedules of Public Safety Dispatchers assigned to staff support positions do not include paid lunch breaks.

7.12 Overtime and Compensatory Time

- 7.12.1 An employee who works a normal work schedule as defined by Section 7.3 and is authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of 1-1/2 times the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement.
- 7.12.2 Part-time employees are only eligible for overtime pay or compensatory time if the employee works over twelve (12) consecutive hours in the same assignment or over forty (40) hours in one week, or if the overtime exceeds eight (8) hours and is scheduled without a twenty-four (24)-hour notice.
- 7.12.3 An employee who is assigned or elects and is approved for an alternative work schedule as defined by Section 7.11 and is authorized or required to work overtime who works in excess of the regular daily hours scheduled under that alternative work schedule, or in excess of eighty (80) hours per biweekly pay period, shall be compensated at the rate of 1-1/2 times the employee's 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 their workweek requirement.
- 7.12.4 If an employee is scheduled to work overtime on the employee's day off and the work is canceled within twenty-four (24) hours of the scheduled overtime, the employee is entitled to two (2) hours compensation at the appropriate rate. If the overtime is canceled at least twenty-four (24) hours before the work is scheduled, no compensation is due.
- 7.12.5 Overtime worked shall be compensated at the 1-1/2 times rate. An employee assigned to work overtime may elect to either be paid for such overtime or be credited with compensatory time off, provided that the election of compensatory time off does not interfere with the Department's or the City's ability to recover funds related to the overtime assignment; the employee makes such election during the pay period in which the overtime is worked; and in the event the employee requests payment for such overtime, the department's budget can accommodate such payment.
 - 7.12.5.1 Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off, unless emergency circumstances necessitate cancellation of the time off. In such event, the employee will remain credited with the time cancelled.
 - 7.12.5.2 Compensatory time off credited to an employee, which is not taken within twenty-six (26) pay periods following the pay period in

which the overtime is worked, shall be paid to the employee at the appropriate rate. An employee may be required to take the compensatory time off prior to the expiration of this time period, if the Department's budget will not accommodate payment of such time. An employee shall not be required to take compensatory time off during the same pay period during which it is earned.

7.12.5.3 Notwithstanding any other provision of Section 7.12.5 to the contrary, the Department Director or designee, may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department with reasonable notice provided to affected employees. This announced intent may apply to an entire department or to a specified section(s) of a department.

7.12.5.4 Compensatory Time Payoff. An employee who separates from employment by reason of resignation, discharge or retirement and who upon the effective date of such separation has accrued unused compensatory time shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the Will or the administrator of the estate.

7.12.5.5 Public Safety Dispatchers. For purposes of the FLSA a 480 hour cap shall apply to Dispatchers on compensatory time accumulation. All compensatory time shall, however, be subject to being paid off if not used within twenty-six (26) pay periods after it is earned, pursuant to Section 7.12.5.2 of this Agreement.

ARTICLE 8 SHIFT BIDDING

8.1 The work unit may determine the method for assigning shifts. Should a conflict arise, seniority in class shall be used to assign shifts subject to:

1. operational needs,
2. the Department Director's, or designee's, right to deny a shift assignment based upon the need to provide quality service to the public, or
3. the need to assign employees based on special skills.

8.2 The work unit may agree to define seniority as time in class within department in lieu of time in class city-wide.

8.2.1 Employees accrue seniority for the time they work in each of the following classifications: Public Safety Dispatcher I, Public Safety Dispatcher II, Senior Public Safety Dispatcher and Supervising Public Safety Dispatcher. For purposes of calculating seniority for vacation and shift bidding, both full-time and part-time service days are combined under the above classifications.

8.2.2 Employees in the Police Department who are promoted within their current job series shall accrue seniority in the promoted class commencing on the date of appointment. However, if the employee returns to their former class within three (3) years of appointment to the higher class, either voluntarily or due to rejection, the seniority accrued in the higher class shall be counted as

departmental seniority in the previous class(es) and any seniority accrued in the higher class(es) shall be forfeited.

- 8.2.3 Once employed by the City, employees shall accrue seniority in terms of service days which are based upon hours of paid time. Unpaid time (e.g. unpaid leaves, suspensions, etc.) does not count as service days.
- 8.3 A shift vacancy which occurs outside the normal bidding process may be filled by an administrative placement.
- 8.4 Communications Employees' Shift Assignments. Employees shall have the right on at least an annual basis to bid for shift assignments based upon seniority in class within department, subject to the right of the Department Director, or designee, to deny such bid based upon the need to provide quality service to the public. The denial of a bid for a shift assignment shall not be subject to the grievance procedure.
 - 8.4.1 Shift trades shall be permitted. The denial of a shift trade shall not be subject to the grievance procedure.
- 8.5 Denial of Shift Bid. Any employee eligible to request a shift assignment whose request for assignment is denied, shall be entitled to a written explanation of the denial from the Department Director or his/her designee. Such request shall be made in writing within five working days following the denial. A written explanation shall be given to the employee within five (5) working days following receipt of the request.
 - 8.5.1 For Police Department personnel, in the event the matter is not resolved by the Chief of Police or his/her designee, the employee may within five (5) working days of receipt of the decision submit a written request for review to the City Manager or his/her designee. The request must include the reason or reasons why the employee is not satisfied with the decision previously rendered. A written decision shall be given to the employee within ten (10) working days following receipt of the request. The decision of the City Manager or his/her designee shall be final and binding.

ARTICLE 9 TEMPORARY MODIFIED DUTY

- 9.1 The City and MEF recognize that, from time to time, employees may be unable to perform their full range of duties required of their position due to a work-related injury or illness. In order to provide gainful employment to these individuals and to maximize productivity, the City may create temporary modified job duties.
- 9.2 The City has the exclusive right to determine whether or not to create or eliminate temporary modified job duties and to assign eligible employees to fill such jobs.
 - 9.2.1 The City shall not discriminate in assigning temporary modified job duties.
 - 9.2.2 Employees assigned to temporary modified duties shall continue to accrue class seniority and other benefits based on hours worked.
- 9.3 Employees assigned to temporary modified job duties shall be returned to their regular jobs at such time as they are medically certified as capable of performing the full range of duties of said job.
- 9.4 If temporary modified job duties cannot be accommodated by the employee's department, the City will attempt to find temporary modified job duties elsewhere in the City. Departmental seniority will not be affected.

9.5 This Article, Article 9, is not subject to the grievance procedure.

ARTICLE 10 LEAVES

10.1 Holidays

10.1.1 Except as otherwise provided, each full-time employee shall be eligible for paid holiday leave on each of the following specified holidays, and on no other day, during the term of this Agreement:

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

10.1.2 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be observed on the preceding Friday.

10.1.2.1 In continuous operations and those which require employees to work on Saturdays and Sundays, when a holiday falls on a Saturday or Sunday, the actual holiday will be observed rather than the city-observed holiday.

10.1.3 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, or designee, the Director of any department of the City government may specify the days of the week and the hours of such days when any such employee in their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any of said holidays shall receive the salary that he/she would be entitled to for that day at his/her regular rate of pay, and in addition thereto, he shall receive compensatory time off duty equal to 1-1/2 times the number of hours the employee works on said holiday.

10.1.4 If any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during their assigned work day. Said compensatory time off duty shall be credited to such employee in accordance with Article 7, Section 7.12 provided, however, that upon written request by the employee to the Department Director, or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

10.1.5 Said compensatory time off duty shall be credited to such employee in accordance with Section 7.12 of this Agreement; provided, however, that upon written request by the employee to the Department Director, or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to their regular pay for such holiday and in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

10.1.6 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San José, or other applicable law, and not in addition thereto.

10.1.7 An employee who is scheduled to work on a holiday, and who does not work due to illness or injury for which they would otherwise be eligible for sick leave, shall be credited with sick leave for the day and shall not be eligible for holiday leave.

10.1.8 Reduced Work Week - Holiday Benefits. Paid holiday leave shall be granted to employees on a reduced work schedule based on the number of hours per week the employee is regularly scheduled to work under the reduced schedule. Holiday compensation for such employees shall be as follows:

<u>Regularly Scheduled Hours per Week</u>	<u>Hours of Paid Leave for Each Holiday</u>
35-39	8 Hours
30-34	6 Hours
25-29	5 Hours
20-24	4 Hours
Less than 20	0

10.1.8.1 If a holiday falls on a day in which the employee is regularly scheduled to work a number of hours in excess of the paid holiday leave listed above, the employee shall arrange in advance with their supervisor to either work additional hours on another day of the week or to take vacation, compensatory time off or lost time for the excess hours.

10.1.9 Alternative Work Schedule – Holiday Benefits. The following provisions for holiday and other paid leave shall apply to employees on an alternative work schedule.

10.1.9.1 If an employee takes paid leave (e.g. holiday, sick leave, vacation, compensatory time off, etc.) on a scheduled workday, the employee shall be entitled to pay for the number of hours the employee was scheduled to work that day.

10.1.9.2 If a holiday is observed on an employee's scheduled day off, the employee shall be credited with eight hours compensatory time off at the 1.0 rate for a full day holiday.

- 10.1.9.3 If an employee on an alternate schedule works on a holiday, the employee shall receive eight (8) hours of compensatory time at the 1.0 rate for a full day holiday, and in addition shall receive pay or compensatory time off at the 1.5 rate for the number of hours actually worked.
- 10.1.9.4 If any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to receive eight (8) hours of compensatory time off duty at the 1.0 rate. Said compensatory time off duty shall be credited to such employee in accordance with Section 7.12 provided, however, that upon written request by the employee to the Department Director, or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.
- 10.1.10 Part-Time Employees – Holiday Benefits. Holiday leave with pay and compensation for time worked on a holiday shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees; provided, however, that each eligible part-time employee shall be entitled to holiday leave with pay for a number of hours each holiday based on the number of hours per week such part-time employee is indefinitely assigned to work in the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

<u>Regularly Scheduled Hours Per Week</u>	<u>Hours of Leave with Pay Each Holiday</u>
30-39 Hours	6 Hours
25-29 Hours	5 Hours
20-24 Hours	4 Hours

- 10.1.10.1 Compensation for holidays shall be according to the above schedule regardless of the number of hours any eligible part-time employee may have been scheduled to work or would have been required to work on any designated holiday.
- 10.1.10.2 Each part-time employee who is not eligible to receive supplemental benefits provided by this Article and who is required to work on any of said holidays shall receive the salary that the employee would be entitled to for the hours worked on that day at the employee's regular rate of pay, and in addition thereto, shall receive compensation in a sum equal to one-half times the employee's regular hourly pay multiplied by the number of hours worked by the employee on such holiday, provided and excepting,

however, that no part-time employee who is required to work on any of said holidays and who received a flat daily rate of pay, plus room and board shall be entitled to or shall be paid any compensation in addition to the employee's regular flat daily rate of pay plus room and board.

- 10.1.11 Library Holiday Schedule. Due to the scheduling needs of the public library the above listed holidays may be observed on a day other than the date designated by the City. A calendar listing the dates of holiday observance for the library shall be provided to library employees in a timely manner, but at a minimum by October 31st for the upcoming calendar year. Library employees regularly scheduled for a Tuesday through Saturday work week shall work Monday through Friday when December 25th and January 1st fall on a Saturday.
- 10.1.12 Holiday Closure. The City Manager, or designee, may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement. Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees taking lost time during the closure shall continue to receive vacation, sick leave, city-wide and department seniority accruals. Eligible employees who have been employed with the City for less than thirteen (13) bi-weekly pay periods, may use available vacation leave during the holiday closure.
- 10.1.13 Holiday-In-Lieu Pay For Public Safety Dispatchers. In lieu of the holiday compensation provided above, employees in the Public Safety Dispatcher class series (I, II, Senior and Supervising Public Safety Dispatcher) shall be paid an amount equal to 6.5% of base salary as holiday pay. Holiday-in-lieu compensation shall be included in the employee's final average salary for the purpose of pension calculation. Employees who are paid such holiday-in-lieu pay may be required to work on holidays, and do not receive any other form of holiday compensation under any other section of this Agreement.

10.2 Vacation and Personal Leave

- 10.2.1 Eligible Full-time Employee - Vacation. Each eligible full-time employee, who has been employed as such for at least thirteen (13) biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:

- 10.2.1.1 Employees shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or as amended. An employee shall be entitled to accrue vacation leave in the amount specified below for each cycle of 26 full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of employment as specified:

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

- 10.2.1.2 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 two-hundred (200) hours of the maximum allowable accrual in the previous cycle, whichever is less, of unused vacation leave, together with any earned vacation leave which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. An employee carrying-over greater than the maximum allowable vacation hours shall have the excess amount deducted from the following year's accrual.
- 10.2.1.3 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease, and if the employee should have taken more vacation leave than accrued at the time of separation from employment, there shall be deducted from the employee's final pay, or the employee shall refund to the City such pay as the employee shall have received for vacation leave theretofore taken. The provisions of this Section 10.2.1.3 shall not apply to any full-time employee whose employment by the City is discontinued 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.
- 10.2.1.4 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, at the time of such separation from employment, full pay for any vacation leave which may then have accrued and is not used.
- 10.2.2 Vacation Pay. If, in the judgment of the City Manager, or designee, it is desirable by reason of a shortage of staff 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, such work may be authorized. 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 the employee's regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, the employee may elect, in writing, filed with the Director of Employee Services, or designee, to carry over such leave to the subsequent cycle of twenty-six (26) biweekly pay periods.
- 10.2.3 Vacation Leave. Use of accrued vacation or personal leave is subject to the advanced approval of the Department Director or designee. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless the employee elects or consents to commence such leave at another and different time. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten (10) working days of the receipt of the written request. Nothing in this section shall interfere with an established vacation scheduling procedure.

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

10.2.3.1.1 In the absence of conflict, the work unit may determine the method for scheduling vacations. Should a conflict arise, preference of vacation leave timing shall be given in order of seniority, except that pre-approved vacation shall be honored, subject to operational requirements. For purposes of this section, seniority shall be determined first by the length of time served in the classification and, then, by time served in the City.

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

10.2.5 Vacation Bidding – Public Safety Dispatcher. Vacation bidding shall be governed by Section 10.2.3 of this Agreement, except that for the Dispatcher I and Dispatcher II classifications County service and City service in the Police Department and the Fire Department shall all be counted in determining the amount of seniority in class an employee has for the purposes of vacation bidding.

10.2.5.1 Seniority in class shall be used to bid against others within the same department (i.e., Police or Fire) and on the same shift.

10.2.5.2 Part-time Dispatchers shall bid with full-time Dispatchers for vacations.

10.2.6 Eligible Part-time Employees – Vacation. During the term of this Agreement, and subject to the same restrictions, conditions, and limitations applicable to full-time employees as provided in this Agreement, except as otherwise hereinafter provided, eligible part-time employees, as described in Section 7.9.2, shall accrue and be granted leave of absence with full pay for vacation purposes on the following basis:

10.2.7 During the employee's first 10,400 hours of employment in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.03875 hours of vacation leave for each hour worked, exclusive of overtime.

10.2.8 During the employee's first 10,400 hours following the employee's first 10,400 hours in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.05875 hours of vacation leave for each hour worked, exclusive of overtime.

10.2.9 During the employee's first 4,160 hours following the employee's first 20,800 hours in a regularly scheduled part-time position, the employee shall accrue

vacation leave at the rate of 0.06625 hours of vacation leave for each hour worked, exclusive of overtime.

- 10.2.10 During the employee's first 4,160 hours following the employee's first 24,960 hours in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.07375 hours of vacation leave for each hour worked, exclusive of overtime.
- 10.2.11 During each hour following completion of 29,120 hours of employment, in a regularly scheduled part-time position, the employee shall accrue vacation leave at the rate of 0.08125 hours of vacation leave for each hour worked, exclusive of overtime.
- 10.2.12 Carry over vacation shall be limited to 120 hours or the employee's maximum allowable accrual in the previous cycle, whichever is less.
- 10.2.13 Vacation leave may be taken only after completion of 1,040 hours of employment and in an amount equal to but not more than the amount of vacation accrued.
- 10.2.14 Any such part-time employee shall be entitled to paid vacation leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 10.2.15 No eligible part-time employee shall be entitled to vacation leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not assigned to work or would not have been required to work on that day or portion of that day, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 10.2.16 Personal Leave. Each full time employee shall be entitled to a total of sixteen (16) hours of personal leave per year. Such leave may be scheduled in one-half hour increments, at any time, subject to approval of the supervisor. Personal leave does not accrue. Any such leave not taken by the date of separation for employees separating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than 16 hours of Personal Leave in any given calendar year.
 - 10.2.16.1 Employees hired on or after July 1 shall be entitled to only eight (8) hours of personal leave in the first payroll calendar year of employment.
 - 10.2.16.2 Each benefited part-time employee shall be entitled to annual personal leave of eight (8) hours per year except that, in the first payroll calendar year of employment, employees hired before July 1st will get eight (8) hours of annual personal leave and employees hired on or after July 1st will get four (4) hours of annual personal leave.

10.3 Sick Leave

- 10.3.1 Sick Leave – Full-time Employees. Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

- 10.3.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, compensatory time off, or other paid leave shall be considered time worked for purposes of this section.

10.3.2 Sick Leave – Part-Time Employees

- 10.3.2.1 During the term of this Agreement, sick leave with pay shall be granted to eligible part-time employees in the amount of 0.04616 hour of sick leave for each hour worked, exclusive of overtime, and shall be subject to the same restrictions, conditions and limitations as are applicable to paid sick leave for full-time employees.

- 10.3.2.2 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

- 10.3.2.3 No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact, the employee is not assigned to work or would not have been required to work on that day or portion of that day, inclusive of any hours an employee elects to work in addition to their indefinite assignment, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

- 10.3.3 Use of Sick Leave. Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments; or for the care related to the illness or injury of the employee's child, mother, father, spouse or domestic partner registered with the Department of Employee Services.

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, mother-in-law, stepfather, stepmother or stepchild.

The provisions of this section related to the use of sick leave for the care related to the illness or injury of the employee's family members as defined above shall expire at the end of the term of this Agreement. In the negotiations for a successor Agreement, the parties shall review and evaluate the appropriateness of this benefit.

When an employee has exhausted all of his/her sick leave, the employee may be allowed to use accrued vacation, compensatory time or personal leave in lieu of unpaid time subject to the approval of the Department Director or designee and pursuant to 10.3.5.1 may be required to furnish medical verification.

- 10.3.3.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Section 10.4 Disability Leave, or if the employee is medically required to be absent from

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

- 10.3.3.2 Accrued sick leave not to exceed three 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.
- 10.3.3.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Section 10.4 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Section 10.4, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in 1/2 hour increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 10.3.3.4 Accrued sick leave may be used in accordance with the provisions of the Catastrophic Illness or Injury Time Donation Program.
- 10.3.4 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.
- 10.3.5 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee notifies their immediate superior, Department Director or designee, of the employee's intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Manager, or designee, may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.
 - 10.3.5.1 An employee may be required to furnish medical verification or other substantiation for any absence for which sick leave payment is requested.
 - 10.3.5.2 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 related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. Any full-time

employee who is unable to return to work after being absent on unpaid sick leave for twelve (12) consecutive months or for twelve (12) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service.

10.3.5.2.1 Pursuant to Article 10.8, an employee who is not otherwise entitled to any additional unpaid sick leave may request a leave of absence without pay, subject to approval of the appointing authority or designee.

10.3.5.3 A full-time or part-time employee on paid or unpaid medical leave which extends for a period of thirty (30) or more calendar days shall inform the department of their medical status and probable date of return to work as soon as this information is known, and at least in intervals of no more than thirty (30) calendar days. Such notice shall be in writing to the Department Director, or designee.

10.3.6 Sick Leave Payoff. Sick Leave Payout shall be given to full-time and part-time benefited employees who are members of the Federated City Employees Retirement System the time of retirement or death under one of the following conditions:

10.3.6.1 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 disability retirement.

10.3.6.2 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 provisions in the San José 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 fifteen (15) years of service in the applicable retirement plan.

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

10.3.6.4 Death of Terminated Employee. The estate of any full-time or eligible part-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code, and has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

10.3.6.5 Payout shall be determined as follows. If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first,

multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

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

or 400 - 799 hours: Hours accumulated × 60% of final hourly rate

or 800 - 1200 hours: Hours accumulated × 75% of final hourly rate

10.3.7 Sick Leave – Public Safety Dispatchers. The provisions of Section 10.3.6 of this Agreement governing sick leave payout shall apply, except that County service shall be counted in meeting either the ten (10) or fifteen (15)-year eligibility requirement.

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

10.4 Disability Leave

10.4.1 Disability Leave. Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees eighty-five percent (85%) of their regular base salary.

10.4.2 Eligibility for Disability Leave Supplement. A full-time employee required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in Section 10.4.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

10.4.2.1 After the initial three (3)-day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Worker's Compensation Section. In no event may DLS exceed the limit specified in Section 10.4.6.

10.4.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.

10.4.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from an act of gross negligence of such employee; and/or any work voluntarily undertaken by employee from which he has been

prohibited from engaging in as determined by a City physician, prior to the date of injury.

- 10.4.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 10.4.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals eighty-five percent (85%) of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
1. The time the employee is medically required to be absent due to a work-related injury or illness, after the required three (3)-day waiting period.
 2. The period of time WCTD 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.
 3. Nine (9) calendar months (274 days or 1,560 hours if not continually absent) following the date of injury.
- 10.4.6.1 Time Limit for DLS Eligibility. After 1,560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
- 10.4.7 Disability Leave Supplement is in Lieu of Regular Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 10.4.8 Requirement of Evidence Proving Temporary Disability. The Director of Finance, or designee, is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director, or designee. The Director, or designee, may require the employee to submit to a medical examination by a physician selected by the City.
- 10.4.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Section 10.3.3.3, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service.
- 10.4.9.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave.
- 10.5 Bereavement Leave. Each full-time or benefited part-time employee shall be granted bereavement leave with full pay for up to forty (40) work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within fourteen (14) calendar days following the death of an 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 shall be final, with no process for further appeal. Bereavement leave shall be granted to eligible part-time employees on the same basis and subject to the same restrictions, conditions and limitations as apply to such leave with pay and such compensation for full-time employees; provided, however, that each eligible part-time employee shall be entitled to bereavement leave with pay for a number of hours based on the number of hours per week such part-time employee is indefinitely assigned to work in the employee's regularly scheduled part-time position. Such number of hours shall be in accordance with the following hours per week scheduling:

<u>Regularly Scheduled Hours Per Week</u>	<u>Hours of Bereavement Leave with Pay</u>
30-39 Hours	Up to 30 Hours
25-29 Hours	Up to 25 Hours

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

10.5.1 A domestic partner, as referenced in Section 10.5, must be the domestic partner registered with the Department of Employee Services.

10.5.2 Anything hereinabove to the contrary notwithstanding, no such employee shall be granted bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

10.6 Jury Duty. Each full or part-time employee who is eligible for benefits under Article 7.9.2 of this Agreement who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive their regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify their immediate supervisor.

Employees assigned to regular shifts:

10.6.1 Jury Selection Process and Jury Impanelment. Employees assigned to a Monday through Friday day shift which includes all employees regularly assigned to work any shift scheduled to begin between 6:00 a.m. and 1:59 p.m. shall be subject to the following for both the jury selection process and jury impanelment:

- 1. If the employee spends five (5) or more hours in either the selection process or jury impanelment, the employee need not return to work. For

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

2. If the employee spends less than five (5) hours in either the selection or jury impanelment processes, they must report to work and complete their shift, minus the time spent in the selection process. For this, the employee will receive their regular base pay rate for that shift and shall pay to the City the amount received from the court, excluding mileage.
3. If the employee spends less than five (5) hours in either the selection or jury impanelment processes and does not return to work, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.
4. Employees are not eligible for overtime due to time spent in the jury selection process or jury impanelment.

Employees assigned to shifts other than regular shifts (as defined above):

10.6.2 Jury Selection Process. Employees assigned to a shift regularly scheduled to start between the hours of 2:00p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are required to appear for jury selection process shall be subject to the following:

1. For purposes of providing employees adequate rest before appearing for jury selection, employees shall be allowed to adjust their shift to an end time no later than 1:00 a.m. on the morning they are required to appear for jury selection.
2. If the employee spends five (5) or more hours in the selection process, the employee need not report to work for the following shift if it is the next calendar day. For this, the employee receives the full day's pay for that shift and shall pay to the City the amount received from the court, excluding mileage.
3. If the employee spends less than five (5) hours in the selection process, the employee shall report to work for their next scheduled shift. Hours spent in the selection process will be deducted from either the beginning or end of the next shift, pending supervisor's approval. For this, the employee will receive a full day's pay and shall pay to the City the amount received from the court, excluding mileage.
4. Employees are not eligible for overtime due to time spent in the jury selection process.

10.6.3 Jury Impanelment for Employees Assigned to a Swing or Night Shift. Employees assigned to a shift regularly scheduled to start between the hours of 2:00 p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are selected to serve on a jury shall be subject to the following:

1. Employees shall be temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m., Monday through Friday. This temporary schedule change shall only apply to employees who are selected to serve on a jury, not those who are called to jury selection.
2. The temporary schedule change shall begin on the first day of the work week following jury impanelment. Until the temporary shift change takes effect, the provisions applicable to jury selection for employees on alternate shifts shall apply.

3. Once an employee is temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m. Monday through Friday, the provisions applicable to jury duty for employees on regular Monday through Friday day shifts shall apply.
 4. Upon completion of jury duty, the employee will resume their normal work schedule on the first day of the workweek following release from jury duty.
- 10.7 Witness Leave. Each full-time employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive their regular salary during the term of their service as a witness under subpoena, less any and all witness fees which the employee may receive therefore. Compensation will not be paid if the employee is a party to a state or federal action.
- 10.7.1 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be credited with overtime for the time spent in court, or for two (2) hours, whichever is greater, less any and all witness fees which the employee may receive therefore. Compensation will not be paid if the employee is a party to the State or Federal action.
- 10.7.2 Upon service of subpoena, an employee shall immediately advise their Department Head, or designee, or supervisor thereof, and of the time when the employee is required to appear in Court.
- 10.8 Other Leaves Of Absence
- 10.8.1 All requests for leaves of absence without pay shall be made in writing. The appointing authority, or designee, may grant an employee a leave of absence without pay for good and sufficient reason, not to exceed twelve (12) months. Such leaves may, however, be extended, not to exceed an additional six (6) months, upon written request of the employee, subject to approval of the appointing authority, or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 10.8.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority, or designee, 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. Failure of the employee to return to work on the first scheduled work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered a voluntary resignation, unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to a position in the department within the classification held by the employee at the time the leave commenced.
- 10.8.3 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.

- 10.8.4 The employee is responsible for coordinating the return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps taken.
- 10.8.5 For purposes of this Section 10.8, seniority shall be defined in accordance with Section 11.1.1 of Article 11, entitled Layoff.
- 10.8.6 Any employee who is absent without notification to their Department Director, or designee, for two consecutive work shifts, shall be separated from City service, unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 10.8.7 Employees who have been separated from City service for failure to return from leave, or failure to report, and whose failure is determined by the City to be the result of extenuating circumstances beyond the employee's control shall be reinstated.

ARTICLE 11 LAYOFF

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

- 11.1.1 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.
- 11.1.2 A lower class shall mean a class with a lower salary range.
- 11.1.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 11.1.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 11.1.5 Certain provisions apply only to employees hired directly from Santa Clara County (County) during the transition phase wherein the communication function was transferred from the County to the City. In these instances such employees are referred to as County employees.

11.2 Order of Layoff. When one or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

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

11.3 Communications Employees

11.3.1 In the event of a layoff within the Dispatcher classifications, County time will be counted in determining the order of layoff.

11.3.2 In the event of a layoff which affects City employees outside of the Dispatcher classification, County time will not be counted and only total City service will be used in determining the order of bumping other City workers.

11.4 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Unions 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.

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

11.5.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.

11.5.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Director of Employee Services or designee. An employee may also accept a vacant position in a higher class, provided the employee has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director 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 working days of the date of being notified of the adverse decision.

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

11.6 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.

11.7 Layoff Reinstatement Eligible List

11.7.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 11.5 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List,

unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.

- 11.7.2 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 11.7.3 Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have the employee's name removed from the Reinstatement Eligible List.
- 11.7.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three-year period specified herein may request that 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, or designee, be returned to the Reinstatement Eligible List.
- 11.7.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three years from the effective date of such person's most recent layoff.
- 11.8 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.
- 11.9 Part-Time Employees and Layoffs
 - 11.9.1 Part-time benefited employees. When identifying part-time benefited positions for elimination, Departments shall consider the following factors in determining the employee(s) to be displaced:
 - Seniority (as determined by total hours worked in current classification) and;
 - Department and/or program needs inclusive of special skills
 - 11.9.1.1 Departments shall make available a written explanation of the factors and methods applied to determine displacements for their department and a written explanation to an affected employee upon request.
 - 11.9.1.2 Employees impacted by the displacements may appeal the decision to the Director of Employee Services. The written response of the Director shall be final and binding.
 - 11.9.1.3 Any employees displaced by layoffs may elect to be placed in the part-time employee rehire pool and if selected for rehire in their former classification may return through the non-competitive process.

ARTICLE 12 WAGES AND SPECIAL PAY

- 12.1 Wages 2004-2005. Effective July 1, 2004, all salary ranges for employees holding positions in classifications assigned to MEF (Union Codes 051/05 and 052/07) shall be maintained as in effect as of June 30, 2004, as listed in Exhibit I and shall remain in effect until June 30, 2005.
- 12.2 Wages for part-time employees. Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classifications.
- 12.3 Shift Differential. The following provision for eligibility for shift differential shall be effective September 2, 2001.
- 12.3.1 A swing shift differential of one dollar and forty cents (\$1.40) an hour shall be paid to employees for each regularly scheduled hour worked after 2:00 p.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 5:00 p.m. Effective June 23, 2002, the rate will increase to one dollar and fifty cents (\$1.50) per hour.
- 12.3.2 A night shift differential of one dollar and sixty cents (\$1.60) per hour shall be paid to employees for each regularly scheduled hour worked after 11:00 p.m. and prior to 8:00 a.m. if at least four (4) hours of a regularly assigned schedule of continuous work hours are worked after 11:00 p.m. and before 8:00 a.m. Effective June 23, 2002, the rate will increase to one dollar and seventy-five cents (\$1.75) per hour.
- 12.3.3 Shift differential shall be paid to an employee for the hours worked when assigned to cover another employee's temporary absence and when the absent employee would have otherwise qualified for shift differential as defined above.
- 12.3.4 Paid leave time does not qualify for payment of shift differential except when an employee uses a minimum of forty (40) consecutive hours of vacation, compensatory time or personal leave. The employee will continue to be paid shift differential as though they had worked their assigned shift during the period of vacation. City observed holiday hours may be credited towards meeting the forty (40) consecutive vacation hours requirement, however, holiday leave hours do not qualify for payment of shift differential.
- 12.3.5 Except as otherwise required by State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.
- 12.4 Bilingual Pay – FT/PT. Eligible Employee. An employee must meet at least one of the following eligibility requirements and must be certified as bilingual for oral communication, written translation or sign language duties according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the Union.
1. The employee is currently assigned to a position selectively certified based on bilingual ability by the Director of Employee Services, or designee; or
 2. The duties currently assigned/currently being performed by an employee have been designated by the Department Director or designee as requiring utilization of a non-English language on a regular basis.
- 12.4.1 Each full-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of twenty-nine dollars (\$29) per biweekly pay period or for performing written

and oral translation duties at the rate of forty dollars (\$40) per biweekly pay period for each pay period actually worked.

12.4.2 Each part-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of nineteen dollars (\$19) per biweekly pay period or for performing written and oral translation duties at the rate of thirty dollars (\$30) per biweekly pay period for each pay period actually worked.

12.4.3 If an eligible employee is on paid leave for a period of one (1) full pay period or more, the employee will not receive bilingual pay for that period.

12.4.4 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Employee Services. The written decision of the Director of Employee Services shall be final, with no process for further appeal.

12.5 Shorthand Differential Pay. A full-time employee in a classification for which skill in taking shorthand dictation may be required who meets the eligibility requirements set forth herein shall be compensated at the rate of twenty-five dollars (\$25) per biweekly pay period for each pay period actually worked. Eligibility requirements are:

12.5.1 The employee has been approved by the Director of Employee Services, or designee for selective certification based on ability to take shorthand dictation and is or was selectively certified for a position which has been verified by the Department Director, or designee as requiring shorthand and is currently assigned to such position, or

12.5.2 Such employee must be certified as proficient in taking shorthand dictation at the speed and accuracy designated appropriate to the classification for which the skill is required according to the current established procedure. If the employee was shorthand certified when hired and meets either of the eligibility criteria above the employee will be considered eligible.

12.6 Working in a Higher Classification. Upon specific assignment by the Department Director, or designee, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six (6) months.

12.6.1 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. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within each work day. In the event the assignment is for a minimum of 24 cumulative work hours within one (1) pay

period and a minimum of four (4) consecutive work hours within one (1) work day, the employee shall be compensated at the appropriate rate for all the eligible hours worked in the higher class within the pay period.

12.7 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift.

12.8 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 12.9 above, in lieu of the one hour of standby compensation for that eight (8) hour shift.

12.9 Vehicles and Mileage Reimbursement

12.9.1 Use of City and Private Vehicles. The City and the Union agree that the use of a vehicle is essential to performing the duties of some jobs. Therefore, the Union recognizes the City's right to require employees to use their own vehicles when no City vehicle is available, and/or to use City vehicles when available.

12.9.2 Mileage Reimbursement. Each employee of the City authorized or required by the City Manager or designee to use the employee's private automobile in the performance of the duties of the employee's position, shall be entitled to receive and shall be paid as a travel allowance for such use of their private automobile a "mileage reimbursement rate" consistent with the City's rate. The City will review the rate annually.

12.9.3 Auto Liability Insurance. No employee shall be required, as a condition of employment, or continued employment, to maintain automobile liability insurance in excess of the minimum required by the State of California.

12.10 Uniform Allowance. An annual Uniform Allowance not to exceed five-hundred dollars (\$500) shall be paid to eligible employees regularly assigned to the classifications listed below, provided that such eligible employees are required, in the performance of the assigned duties of such classifications, to wear an approved uniform.

- 1181 Police Data Specialist I
- 1182 Police Data Specialist I (PT)
- 1183 Police Data Specialist II
- 1184 Police Data Specialist II (PT)
- 1185 Police Data Specialist Supervisor
- 2416 Senior Security Officer
- 2431 Security Officer
- 2432 Security Officer (PT)
- 2441 School Crossing Guard (PT)
- 2443 School Crossing Guard Coordinator
- 8026 Supervising Police Data Specialist
- 8512 Supervising Public Safety Dispatcher

- 8513 Senior Public Safety Dispatcher
- 8533 Senior Public Safety Dispatcher (PT)
- 8514 Public Safety Dispatcher II
- 8515 Public Safety Dispatcher I
- 8534 Public Safety Dispatcher II (PT)
- 8535 Public Safety Dispatcher I (PT)
- 3252 Animal Services Officer
- 3251 Senior Animal Services Officer

- 12.10.1 The City will provide School Crossing Guards with the initial jacket and patches at no cost to the employee.
- 12.10.2 Employees in the classifications of: 1181 Police Data Specialist I, 1182 Police Data Specialist I (PT), 1183 Police Data Specialist II, 1184 Police Data Specialist II (PT), and 1185 Police Data Specialist Supervisor hired or promoted on or after January 1, 1995, are required to wear an approved uniform. Employees in said classes hired prior to January 1, 1995, are not required to wear a uniform, however, once an employee chooses to wear a uniform, an employee may not revert to non-uniformed status.
- 12.10.3 In the event an eligible full-time employee assigned to a forty (40) hour week is paid for less than 1,040 hours during the 26 full pay periods immediately preceding December 31st, such employee shall be paid that proportion of the allowance which the total number of hours for which the employee was paid in the above period bears to 1,040.
- 12.10.4 Eligible part-time employees shall receive that proportion of the \$430.00 (\$500 with payment received in January 2003) uniform allowance which the total number of hours paid during the twenty-six (26) full pay periods immediately preceding December 31st bears to 2,000; except that employees in the classification of School Crossing Guard (part-time) shall receive that proportion of the \$430.00 (\$500 with payment received in January 2003) which the total number of hours paid during the twenty-six (26) full pay periods immediately preceding December 31 bears to 600.
- 12.10.5 The Uniform Allowance referenced above, or pro-rata portion of such allowance, shall be paid in January of each year during the term of this agreement.
- 12.11 Meal Allowance. In the event an employee is assigned to work 16 or more consecutive hours, the City, at its option, will either provide the employee ten dollars (\$10) as a meal allowance or provide a meal to the employee.
- 12.12 Safety Equipment. Employees in the classification of Security Officer (2431), Security Officer (PT) (2432) or Sr. Security Officer (2416) and who are required, while on duty, to wear the following, shall be provided each of said items: baton, baton holder, gun belt cartridge case, flashlight (3-cell), handcuffs, handcuff case, rainwear including raincoat, rain pants and hat cover. Such items shall remain property of the City and shall be returned to the City upon termination of the employee.
- 12.13 Expert Fee. Employees who possess a land surveyor license issued by the State of California and who are called upon to utilize such licenses on behalf of the City, shall

receive compensation in the amount of twenty-five dollars (\$25) for each pay period in which they utilize such license.

- 12.14 Notary Services. Employees commissioned by the Secretary of State for the State of California to perform notarial services and who are directed to perform notarial services on behalf of the City of San José, shall be compensated at the rate of twenty-five dollars (\$25) for each bi-weekly pay period in which the employee performs notarial services.
- 12.15 Communications Dispatcher Training Pay. Public Safety Dispatcher I or II shall be eligible for additional pay equal to one (1) step for each hour the employee is assigned and is actually engaged in one-on-one training of a Dispatcher trainee.
- 12.16 Police Data Specialist Training Pay. Police Data Specialists shall be eligible for additional pay equal to one step for each hour the employee is assigned and is actually engaged in one-on-one training of a Data Specialist trainee.

ARTICLE 13 BENEFITS

- 13.1 Health Insurance. Eligible employees may elect health insurance coverage under one of the three plans for employee only or employee and dependents. As of the effective date of this Agreement, the plans include: Blue Shield, Kaiser No. 887 and Lifeguard No. G026.
 - 13.1.1 The City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of twenty-five dollars (\$25) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds twenty-five dollars (\$25) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee.
 - 13.1.2 The Benefits Review Forum may evaluate and recommend appropriate changes in Health and Dental Insurance plans. Any recommended changes will be determined by consensus of that Forum, subject to ratification by the Union Executive Board.
- 13.2 Dental Insurance. The City will provide dental coverage for eligible full-time employees and their dependents in accordance with the dental programs described in the pamphlets entitled "Group Dental Plan, City of San José, DDS Group No. 2584" and "Group Dental Program, Prepaid Option." Copies of such pamphlets shall be available upon request in the Employee Services Department.
 - 13.2.1 Each eligible, full-time employee and dependents shall receive annual maximum coverage of \$1500.00 in the Delta Dental Plan effective July 1, 2000.
 - 13.2.2 Each eligible, full-time employee and dependents shall receive a lifetime maximum of \$2,000.00 Orthodontia coverage in the Delta Dental Plan effective January 1, 2000.
 - 13.2.3 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending Sections 3.24, Part 24, and 3.28, Part 17, Title 3 of the San José Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.

13.2.4 Effective after open enrollment period of 2000, the City will use actual rather than blended premium.

13.3 Payment-in-Lieu of Health and Dental Insurance. 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.

13.3.1 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty percent (50%) of the City's contribution toward their 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 percent (50%) of that contribution.

13.3.2 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek 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.

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

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

13.3.5 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

13.3.5.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.

13.3.5.2 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.

- 13.4 Part-Time Employees – Health and Dental Insurance Benefits. During the term of this Agreement, the City shall pay for each eligible part-time employee who is a subscriber to benefits provided for individual coverage, or for individual coverage plus coverage of dependents, under one of the health and dental insurance plans provided for full-time employees, sums of money equal to the percentage of the City's contribution for full-time employees for such individual coverage, or individual plus coverage of dependents, based on the number of hours per week such part-time employee is indefinitely assigned to work in his/her regularly scheduled part-time position. Such sums of moneys shall be determined in accordance with the following such hours per week and percentages:

<u>Regularly Scheduled Hours Per Week</u>	<u>City Contribution For P/T Employees As Percentage Of City Contribution For Full-Time Employees</u>
30-39 hours	75.0%
25-29 hours	62.5%
20-24 hours	50.0%

- 13.5 Life Insurance. The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee. For employees on reduced schedules, the City's contribution for premiums will be provided in accordance with Section 7.10.8.

- 13.6 Employee Assistance Program. The City recognizes that professional counseling is an important benefit to assist employees in resolving personal and family problems which may otherwise affect the employee's job performance and well-being. Through the EAP, licensed counselors are available to help employees resolve problems and identify strategies for coping with difficult situations. The City will provide an EAP for full-time employees and for part-time employees eligible for benefits under Section 7.9.2 of this Agreement, and will continue such benefits at their current level during the term of this Agreement.

Employees are encouraged to contact the Employee Benefits Division at 277.4205 for details regarding this benefit, or contact MANAGED HEALTH NETWORK at 1.800.227.1060 for appointments or further information.

- 13.6.1 Employee Assistance Referral. Performance problems are sometimes related to personal or work-related problems which may be improved through the Employee Assistance Program (EAP). Therefore, if a supervisor believes that an employee's work performance or behavior while on duty is impaired and can be improved through the EAP, the employer, with Department Director or designee approval, may require the employee to attend an initial screening session with the Employee Assistance Program. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions, unless the employee voluntarily signs a release of information form. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

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

- 13.7 Substance Abuse Program. Full-time employees, and part-time employees eligible for benefits under Section 7.9.2 of this agreement, shall be eligible for substance abuse

treatment benefits and are subject to the terms and conditions of the MEF Employees Substance Abuse Policy as provided in Exhibit IV of this Agreement.

- 13.8 Dependent Care Assistance Program. During the term of this Agreement, the City will continue to provide a Dependent Care Assistance Program at the level of benefit provided on the effective date of this Agreement.
- 13.9 Legal Service. The City agrees to pay to the Municipal Employees Federation, AFSCME, Local No. 101, AFL-CIO Legal Trust Fund the sum of four dollars (\$4) per month (\$4.25 per month effective June 23, 2002) for each full-time employee on the payroll for the last pay period ending prior to the first of each month for private legal service benefits for such employees and their dependents subject to the following:
- 13.9.1 No portion of the sums heretofore paid or subsequently paid shall be used to provide legal services for any employee or dependents in any action or proceeding in which the Union is a party or in which the City is a party, and
 - 13.9.2 No portion of the sums heretofore paid or subsequently paid shall be used in connection with any matter, action or proceeding involving employer-employee relations involving the City, its commissions, officers, or employees; except
 - 13.9.3 The provisions of 13.9.1 and 13.9.2 notwithstanding, a portion of the sum so paid may be used to pay the Union's portion of the cost of the arbitrator, including the arbitrator's legitimate expenses, and the Union's share of the transcript(s) of the arbitration proceeding. Further, a portion of the sum so paid may be used to reimburse City employees for time spent as witnesses in arbitration proceedings involving the Union and the City provided such time is spent during regularly scheduled working hours. The compensation, however, shall not include any payment for any such time spent in arbitration proceedings involving the Union and the City which falls outside the employee's regularly scheduled working hours.
 - 13.9.4 The City shall have the right, through independent auditors selected by the City, upon written request to periodically review and audit the books and records of the fund in San José at reasonable times, to determine whether the Union has complied with the conditions contained herein. The Union shall, upon completion of any such reviews and audits, reimburse the City for half of the costs thereof within ten (10) days after receipt of a statement of such costs from the City.
 - 13.9.5 Failure of the Union to maintain such books and records or to make such books and records available in San José or to permit such inspection, or to pay half of the costs of such review and audit shall constitute grounds for the City to terminate or suspend, in its discretion, the payment of further payments; and
 - 13.9.6 If upon inspection of the books and records the City determines that any portion of the sum contributed has been diverted to purposes not permitted by the provisions of this Article, the City may, in addition to any other remedies available to it under law, suspend or terminate further payments.
 - 13.9.7 As used herein, action or proceedings shall include, but not be limited to, court proceedings, proceedings or hearings or appearances before legislative, administrative, or quasi-judicial agencies or bodies and arbitration, except to the extent provided in paragraph 13.9.1 herein above, fact-finding, mediation, or other similar dispute resolving procedures.

13.10 Educational and Professional Program. The City will reimburse each employee one-hundred percent (100%) of expenses incurred, up to \$1000.00 per fiscal year, for registration, tuition, fees, and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Of the \$1000.00 amount, up to \$200.00 may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service, as approved by the Department Director or designee. Section 8.02 of the City's Human Resources Administrative Manual outlines additional details of the program.

13.10.1 Part-Time Benefited Employees—Educational and Professional Incentives. The City will reimburse each eligible benefited employee one-hundred percent (100%) of expenses incurred, up to the maximum amounts per fiscal year listed below. Eligible expenses shall be limited to registration, tuition, fees and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Section 8.02 of the City's Human Resources Administrative Manual outlines additional details of the program. The maximum amounts for eligible benefited employees are based on the employee's established benefit category as follows:

<u>Regularly Scheduled Hours Per Week</u>	<u>Maximum Reimbursement for Part-Time Benefited Employees</u>
30-39 hours	\$750.00
25-29 hours	\$625.00
20-24 hours	\$500.00

13.10.2 If an employee is denied educational and professional incentives under the requirements set forth in Section 13.10 and 13.10.1 above, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Employee Services, or designee. The written decision of the Director of Employee Services, or designee shall be final, with no process for further appeal.

13.11 Vision Care. Effective June 23, 2002, the City will contribute towards vision care for eligible full-time employees up to sixteen dollars (\$16) per month (\$8.00 for 24 biweekly pay periods) or the cost of the premium, whichever is less, for coverage under a vision plan sponsored by the City. The employee shall pay the difference between the City contribution and the total premium of the vision care plan selected by the employee.

ARTICLE 14 CATASTROPHIC ILLNESS OR INJURY TIME DONATION PROGRAM

14.1 Policy Statement. This provision is designed to assist an employee who has exhausted paid leave time due to a critical medical condition of the employee or an eligible family member. This provision allows other employees to donate leave in accordance with the

following terms so an employee may continue in a paid status with the City for a longer period of time.

- 14.2 Definitions. For purposes of this Article the following definitions shall be used.
- 14.2.1 Eligible Employee. A full or part-time benefited employee.
- 14.2.2 Eligible Family Member. 1) A legal spouse or registered domestic partner. 2) A person under eighteen (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.
- 14.2.3 Catastrophic Illness or Injury. A critical medical condition considered to be life-threatening, terminal, or a long-term major physical impairment or disability.
- 14.3 Employee Catastrophic Illness or Injury Leave Donation. An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee has suffered a non-job related catastrophic illness or injury which prevents the employee from being able to work.
- 14.4 Care For Eligible Family Member. An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee is required to be absent from work to care for an eligible family member who has a catastrophic illness.
- 14.5 Eligibility For Donated Leave. To be eligible to receive donated paid leave, the recipient employee's illness or injury, or necessary care of an eligible family member, must require the employee to be absent for a minimum of thirty (30) consecutive calendar days, or thirty (30) cumulative work days within the six (6) previous months. The recipient employee must have exhausted all available paid leave prior to using donated leave, however, the request may be initiated prior to the anticipated date leave balances will be exhausted. Retroactive donations shall not be permitted.
- 14.6 Use Of Sick Leave For Eligible Family Member. In the event an employee becomes eligible for donated leave due to the catastrophic illness of an eligible family member, the employee may be eligible to use sick leave, pursuant to Article 10.3.3, if the employee has exhausted all other available paid leave. However, the employee must meet all of the requirements of the donated leave program and submit appropriate medical verification in order to be eligible to use earned sick leave.
- 14.7 Application. The recipient employee, recipient employee's family, or other person designated in writing by the recipient employee, must submit a written request along with medical verification to the Employee Services Department.
- 14.8 Medical Verification. Medical verification, including diagnosis and prognosis, must be provided by the recipient employee and a copy submitted to Employee Health Services in the Employee Services Department. Employee Health Services shall review the medical verification, consult with the treating physician, and determine whether or not the illness/injury is catastrophic.
- 14.9 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 time available to an employee shall be appropriately prorated for benefited part-time employees.

- 14.9.1 **Increase to Maximum Donation.** If an eligible employee exhausts the maximum 1,040 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 of the maximum to 2,080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through 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 re-verification of the medical condition to determine if the illness or injury still qualifies as catastrophic and prevents the employee from returning to work. The denial of an application for an increase to the maximum donated leave is final and is not subject to the grievance procedure.
- 14.10 **Increments.** Donations of vacation and/or compensatory time shall be made in increments of full or half-hours and are irrevocable.
- 14.11 **Conversion.** Donations shall be on a dollar for dollar basis. The value of donated leave time shall be calculated at the donor's regular pay rate, then converted to hours of sick leave at the recipient's regular pay rate to the nearest half hour to determine the number of hours of sick leave available to recipient. For employees covered by the City's salary continuation insurance plan, use of donated leave will be an offset to benefits in accordance with the provisions of that plan.
- 14.12 **Unused Donations.** Unused hours remaining when the recipient returns to work or is separated from employment with the City shall be retained by the recipient. In the event of the death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipient's estate at one-hundred percent (100%) of the value at the employee's final hourly rate.

ARTICLE 15 RETIREMENT

- 15.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.
- 15.1.1 Administrative costs of the Federated Retirement System, including staff salaries and indirect costs, are to be paid from the retirement fund. Costs to the fund for salaries and indirect costs shall not exceed 0.07% of assets in the fund per year.
- 15.2 **Individual Retirement Account for Employees Not Covered by City Retirement Plan.** All employees in the bargaining unit who are not covered by a city retirement system shall participate in a qualified individual retirement account, such as an Internal Revenue Code Section 457 plan, in lieu of Social Security when such individual account is established and implemented by the City. Such participation shall be in accordance with the plan's requirements and with federal Social Security legislation.
- 15.2.1 An amount of 3.75% from both the City and such employee in the bargaining unit shall be contributed to such plan. Withholding of 3.75% from both the City and such employees shall begin on June 26, 1991. Contributions shall be placed into an interest-bearing escrow account until the final federal Social Security regulations are issued and an IRS 457 plan is established pursuant to such regulations. Upon establishment of such IRS plan, all contributions and earnings in the plan shall be one-hundred percent (100%) vested with the employee. If the employee leaves the City after June 26, 1991 but before the IRS 457 plan is established, the employee is entitled to both City and Employee contributions, to be paid once an IRS 457 plan is established.

- 15.2.2 Monthly administrative cost of processing 457 Plan contributions shall be split equally between the City of San José and the employee.
- 15.2.3 Contributions to the IRS 457 plan shall continue as long as the federal Social Security legislation qualifies an IRS 457 Plan as an allowable alternative to Social Security. In no event shall the City contribute to both an IRS 457 Plan and Social Security for employees affected by this Agreement.
- 15.3 Retirement – Public Safety Dispatchers. Only City service shall be credited toward retirement under the Federated City Employees' Retirement System (FCERS) and eligibility for retiree medical insurance.
- 15.3.1 Retirement benefits defined in the Municipal Code are guaranteed and shall include vesting after two (2) years of service for employees who are hired at age fifty (50) or older and the right to buy back prior City service credit for employees who had \$500.00 or more in contributions to FCERS.
- 15.3.2 After an employee has completed one (1) year of full-time service the employee shall be eligible to go to part-time status without loss of participation in the FCERS.

ARTICLE 16 SAFETY

- 16.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 16.2 An employee who believes their work assignment is unsafe and for that reason refuses to perform such assignment shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.
- 16.3 The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.
- 16.4 Upon request of either the employee or the representative of the State of California, Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment

during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.

- 16.5 The city-wide Safety Committee shall provide one seat for an MEF designated representative. The MEF representative shall attend regular meetings for the purposes of informing the committee of safety issues and concerns and assisting in the development of educational training sessions.

ARTICLE 17 PROBATIONARY PERIODS

- 17.1 Probation Period Calculation. Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to eighty (80) hours of other cumulative or consecutive paid or unpaid absences.
- 17.2 An employee's probationary period may be extended at the discretion of the City up to a maximum of three (3) months of actual and continuous service. The employee will be notified in writing of the length and reason for the extension.
- 17.3 Part-time Probation. The probation period for part-time employees will be considered complete after the employee has worked 1040 regular hours of service. Regular hours do not include paid leave or overtime hours. Part-time non-benefited employees are considered to be "at will" employees with no permanent status and do not serve a probationary period.

ARTICLE 18 ANNUAL PERFORMANCE EVALUATION

- 18.1 The purpose of the annual performance evaluation is to have formal communication between supervisor and employee regarding job performance. It is a value to both parties to have this process be meaningful and fair.
- 18.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.
- 18.3 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.
- 18.4 Key Element Review. If the employee formally receives an overall performance rating of meets standard, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director or designee. The employee must submit a written request to the Director or designee specifying the reasons for such request, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.

- 18.5 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below meets standard, the employee may appeal the rating. Such appeal shall be made to the Department Director or designee within thirty (30) calendar days from the date the employee receives the final performance appraisal. If the employee is dissatisfied with the decision of the Director or designee, the employee may, within 30 calendar days from the Director's or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.
- 18.6 The City Manager, or designee, shall hold a hearing 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 a performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director, City Manager or designees.
- 18.7 If the employee formally receives an overall performance rating that is at or above "meets standard" and is not satisfied with the appraisal, the employee may write a rebuttal within thirty (30) calendar days from the date the employee receives the final performance appraisal. The rebuttal, along with the performance appraisal, will be included in the employee's personnel file. The rebuttal may be in response to the entire appraisal or any particular section(s).
- 18.8 If the employee indicates to their supervisor of the employee's intent to appeal or rebut the evaluation, the employee may request and receive a copy of the evaluation.

ARTICLE 19 DISCIPLINARY ACTION

- 19.1 The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, salary step reduction, demotion and dismissal.

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

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

- 19.2 Step Reduction. The San José Municipal Code defines disciplinary action as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one (1) of the five (5)-step salary range, and the amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.
- 19.3 In the event of a suspension of five (5) days or greater, the City will provide the employee with a Notice of Intended Discipline and a "Skelly" conference prior to the

imposition of the discipline. In cases involving suspensions of less than five (5) days, the City may elect to impose the discipline prior to holding the "Skelly" conference.

- 19.4 Police Department Employees. Disciplinary actions and internal investigations involving non-sworn employees who are subject to the Police Department Duty Manual will be administered in accordance with section C1811 of the Duty Manual.
- 19.5 No provisions of this Article 19 shall be subject to the grievance procedures of this agreement.

ARTICLE 20 PERSONNEL FILES

- 20.1 The City Employee Services Director shall keep a central personnel file for each employee; departments, at their option, may keep a duplicate departmental personnel file. An employee, or with written authorization by the employee, his/her designee, shall be permitted to examine their own personnel file on appointment during normal business hours. Employees shall be provided copies of materials in their personnel files at a cost not to exceed the actual cost of duplication, unless such materials are to be used in conjunction with the processing of a grievance or appeal filed by the employee.
- 20.1.1 Items excluded from the examination of the personnel file are:
1. Items obtained prior to the employment of the person involved, such as reference checks and pre-employment examinations.
 2. Items obtained in connection with a promotional and/or interview examination.
- 20.2 Adverse comments, except material mentioned above, shall not be entered or filed unless the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right to enter and have attached to any such adverse comments his/her own written comments within 30 calendar days of receipt.

ARTICLE 21 GRIEVANCE PROCEDURE

- 21.1 Any dispute between the City and the Union regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Union may file a grievance on behalf of such employee(s).
- 21.2 Procedures
- 21.2.1 Grievances involving the interpretation or application of Resolution #39367, as amended, including any grievance filed pursuant to Section 22 of that Resolution, shall be filed in writing with the Municipal Employee Relations Officer, or designee, and shall be processed in accordance with applicable impasse resolution procedures of that Resolution.
- 21.2.2 Grievances involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article 21.

- 21.2.3 Alternative to the Grievance Procedure. As an alternative to the formal grievance procedure, MEF and Employee Relations may, through mutual agreement, meet and attempt to resolve on an informal basis, problems which arise involving contract interpretation, Civil Service rules, or other matters affecting the relationship between the Union and the City.

The Office of Employee Relations and MEF may review an issue on an ad hoc basis on its merits and its relationship to the contract. The result of these discussions may be:

1. To create a side agreement for immediate implementation.
2. To continue the current practice for discussions during the next contract period.
3. To change practice to conform to the contract language.
4. To maintain the status quo.

If the issue cannot be resolved through this process, the Union maintains the option to proceed through the appropriate grievance procedure.

21.3 Step I

- 21.3.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee a verbal reply.
- 21.3.2 If the employee is not satisfied with the reply of their immediate supervisor, the employee may appeal the grievance to Step II.

21.4 Step II

- 21.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director or designee within five (5) working days following the receipt of the immediate supervisor's verbal reply.
- 21.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:
- A clear statement of the problem.
 - The alleged facts upon which the grievance is based.
 - The section of the MOA claimed to have been violated and the specific violation claimed.
 - The remedy requested by the grievant.
- 21.4.3 The Department Director or designee, may arrange a meeting between the Director, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.
- 21.4.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

21.5 Step III

- 21.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer or designee within ten (10) working days following receipt of the written decision at Step II.
- 21.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall schedule a meeting with the employee, the appropriate Union representative, and the Department Director or designee to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within 10 working days following the meeting.
- 21.5.3 If the decision of the Municipal Employee Relations Officer or designee is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV - Arbitration.

21.6 Step IV - Arbitration

- 21.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer or designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.
- 21.6.2 Within ten (10) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer or designee with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.
- 21.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven persons qualified to act as arbitrators.
- 21.6.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 21.6.5 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.
- 21.6.6 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as

soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

- 21.6.7 The decision shall be sent to the Municipal Employee Relations Officer or designee and to the employee or appropriate representative of the Union.
- 21.6.8 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing. Court reporter fees are also shared equally among the parties.
- 21.6.9 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, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.
- 21.6.10 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.

21.7 General Provisions

- 21.7.1 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, except for appeals to Step IV, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 21.7.2 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 21.7.3 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 21.7.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Section 10.8, entitled Other Leaves of Absence, the employee shall file the grievance in writing at Step II within ten calendar days following the date of separation.
- 21.7.5 Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.

21.8 Department Labor Management Committees

- 21.8.1 Purpose. To serve as an advisory committee and to facilitate employee involvement in issues which affect the immediate work environment and to facilitate positive Union-management relations. These collaborative efforts between labor and management have proven successful in the past and are encouraged when appropriate.
- 21.8.2 Structure. Labor Management Committees will be established in departments by mutual agreement. Management and the Union shall each select their own representatives and in an equal number. Each side is encouraged to propose issues for discussion, and the committee will jointly set priorities. Decision-making within this forum will be by consensus. The LMCs will set up regular meetings and a means for calling additional meetings to handle issues on an ad hoc basis.
- 21.8.3 Authority. Guidelines will be issued by the Office of Employee Relations on the types of subjects that might be appropriate for discussion, e.g., alternate work week, shift bidding, vacation bidding, internal transfer policies, clarification of rules and departmental procedures, rumor control, etc. Training is necessary for the success of this effort and will be provided jointly by the City and the Union as needed. LMCs might serve as a preliminary review of department-initiated changes to policies or practices. The LMCs are not authorized to meet and confer to create contractual obligations nor are they to change the MOA to authorize any practice in conflict with existing contracts or rules. The Office of Employee Relations and MEF Business Agent will be involved in LMC meetings upon request, and the LMCs should keep both parties informed of their discussions and any written material they generate. This process is not designed for individual grievances, disciplines, or to replace the Steward system.

21.9 City-Wide Labor Management Committee

- 21.9.1 Purpose. To provide regular communication between the Union and the City, to solve workplace issues, to provide training for and support to the departmental labor management committees, and to facilitate positive Union-management relations.
- 21.9.2 Structure. Management shall include up to two (2) representatives from Employee Relations and one representative from Employee Services. Labor shall include two Officers and one Business Agent. Additional representatives may be requested to participate on specific issues. Issues for discussion and the meeting schedule will be mutually agreed upon. Decision-making will be by consensus.
- 21.9.3 Authority. The City-Wide Committee will coordinate and provide training and support to department labor management committees as requested, and shall address city-wide issues. The City-Wide Labor Management Committee is authorized to enter into tentative agreements pending usual authority and/or ratification processes. This process is not designed or intended to address individual grievances, review personnel issues, appeal disciplines, replace the steward system, or appeal decisions of department Labor Management Committees.

ARTICLE 22 POOL ASSIGNMENTS

- 22.1 A pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment shall be granted regular employment status and receive benefits if the following conditions are met:

A vacancy exists in a class in the department which the employee is eligible to fill.

The department selects the employee for regular employment status.

- 22.2 A pool employee who has completed 2,080 hours of actual time worked in full-time service in the same assignment and who does not meet the conditions listed in 22.1 shall not be eligible for benefits and shall be removed from the position.

ARTICLE 23 DEFINITION OF THE MARKET

- 23.1 Comparable classifications in cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco and Alameda Counties serving populations of 100,000 or more will be used to compare classifications. Population figures will be used from the U.S. Census Bureau.

- 23.2 Compensation information from the private sector will be gathered from existing published sources, and used to supplement public sector data as deemed appropriate.

- 23.3 Based on the April 1, 2000, U.S. Census Bureau, 2000 Census of Population, the following agencies currently meet the definition of the market:

Alameda County	Berkeley
Concord	Contra Costa County
Daly City	Fremont
Hayward	Oakland
San Francisco City/County	San Mateo County
Santa Clara	Santa Clara County
Sunnyvale	

THIS AGREEMENT executed on the 29th day of June 2004, between the City of San José and the Municipal Employees Federation, AFSCME, Local No. 101, AFL-CIO, IN WITNESS THEREOF, the appropriate representatives of the parties have affixed their signature thereto.

FOR THE CITY OF SAN JOSE:

FOR THE MUNICIPAL EMPLOYEES
FEDERATION, AFSCME, LOCAL NO. 101:

_____/s/
Del D. Borgsdorf
City Manager

_____/s/
Bill Pope
President

_____/s/
Alex Gurza
Director of Employee Relations

_____/s/
Hilda Arenas
Vice President

_____/s/
Sara Hensley
Director of PRNS

_____/s/
Margaret Martinez
Chief Steward

_____/s/ Jim Helmer for Wendy Walker
Wendy Walker
Information Technology Deputy Director

_____/s/
Jodie Clark
Treasurer

_____/s/
Jennifer Maguire
Assistant Budget Director

_____/s/
Matthew Lopez
Secretary

_____/s/
Russ Strausbaugh
Deputy Director of Human Resources

_____/s/
Daniel Earl
Steward

_____/s/
Gina M. Donnelly
Sr. Executive Analyst

_____/s/
Linda Dittes
Business Agent

_____/s/
Julia Chih
Management Fellow

"EXHIBIT I"
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL MEF MISCELLANEOUS (UNIT 051/05)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
1211	Account Clerk I	5	\$16.71	\$20.32	\$1,336.80	\$1,625.60
1213	Account Clerk I PT	5	\$16.71	\$20.32	n/a	n/a
1215	Account Clerk II	5	\$17.89	\$21.74	\$1,431.20	\$1,739.20
1217	Account Clerk II PT	5	\$17.89	\$21.74	n/a	n/a
1231	Accountant I	5	\$27.48	\$33.41	\$2,198.40	\$2,672.80
1233	Accountant II	5	\$29.98	\$36.46	\$2,398.40	\$2,916.80
5242	Airport Noise Spec	5	\$21.02	\$25.56	\$1,681.60	\$2,044.80
3511	Airport Oper Spec	5	\$20.40	\$24.79	\$1,632.00	\$1,983.20
3512	Airport Oper Spec PT	5	\$20.40	\$24.79	n/a	n/a
2233	Alarm Technician	5	\$20.91	\$25.43	\$1,672.80	\$2,034.40
3253	Animal Health Technician	5	\$18.07	\$21.97	\$1,445.60	\$1,757.60
3252	Animal Services Officer	5	\$19.99	\$24.31	\$1,599.20	\$1,944.80
3406	Arborist Technician	5	\$23.10	\$28.07	\$1,848.00	\$2,245.60
6317	Arts Assistant PT	5	\$16.15	\$19.63	n/a	n/a
6311	Arts Programs Coordinator	5	\$28.84	\$35.07	\$2,307.20	\$2,805.60
8201	Assist Envir Serv Spec	5	\$25.91	\$31.49	\$2,072.80	\$2,519.20
3771	Assoc Construction Insp	5	\$28.73	\$34.92	\$2,298.40	\$2,793.60
3713	Assoc Engineering Tech	5	\$26.31	\$32.00	\$2,104.80	\$2,560.00
8202	Assoc Environ Serv Spec	5	\$30.00	\$36.48	\$2,400.00	\$2,918.40
5108	Biologist	5	\$29.74	\$36.15	\$2,379.20	\$2,892.00
3976	Building Rehab Insp I	5	\$28.73	\$34.91	\$2,298.40	\$2,792.80
3977	Building Rehab Insp II	5	\$33.24	\$40.40	\$2,659.20	\$3,232.00
1547	Buyer I	5	\$21.73	\$26.43	\$1,738.40	\$2,114.40
1542	Buyer II	5	\$26.19	\$31.83	\$2,095.20	\$2,546.40
5116	Chemist	5	\$29.74	\$36.15	\$2,379.20	\$2,892.00
5110	Chemist PT	5	\$29.74	\$36.15	n/a	n/a
8057	Class Instructor PT	15	\$12.63	\$24.99	n/a	n/a
3938	Code Enforcement Insp I	5	\$25.30	\$30.74	\$2,024.00	\$2,459.20
3939	Code Enforcement Insp II	5	\$29.30	\$35.61	\$2,344.00	\$2,848.80
1176	Communications Svs Oper	5	\$20.40	\$24.79	\$1,632.00	\$1,983.20
1177	Communications Svs Opr PT	5	\$20.40	\$24.79	n/a	n/a
6101	Community Activity Wkr FT	5	\$15.60	\$18.98	\$1,248.00	\$1,518.40
6105	Community Activity Wkr PT	5	\$15.60	\$18.98	n/a	n/a
6107	Community Services Aide PT	5	\$9.13	\$11.12	n/a	n/a
1331	Computer Operator I	5	\$17.29	\$21.03	\$1,383.20	\$1,682.40
1332	Computer Operator I PT	5	\$17.29	\$21.03	n/a	n/a
1333	Computer Operator II	5	\$19.74	\$23.98	\$1,579.20	\$1,918.40
1334	Computer Operator II PT	5	\$19.74	\$23.98	n/a	n/a
1616	Contract Compl Assistant	5	\$24.55	\$29.84	\$1,964.00	\$2,387.20
1618	Contract Compl Spec	5	\$30.30	\$36.83	\$2,424.00	\$2,946.40
6161	Cook PT	5	\$16.11	\$19.58	n/a	n/a
1187	Crime Data Spec	5	\$22.96	\$27.93	\$1,836.80	\$2,234.40
1188	Crime Data Spec PT	5	\$22.96	\$27.93	n/a	n/a
2232	Crime Preventiom Spec PT	5	\$25.17	\$30.58	n/a	n/a
2231	Crime Prevention Spec	5	\$25.17	\$30.58	\$2,013.60	\$2,446.40
3211	Custodian	5	\$16.87	\$20.50	\$1,349.60	\$1,640.00
3212	Custodian PT	5	\$16.87	\$20.50	n/a	n/a
3731	Darkroom Technician	5	\$18.87	\$22.96	\$1,509.60	\$1,836.80
1322	Data Procg Control Clerk	5	\$20.11	\$24.42	\$1,608.80	\$1,953.60

"EXHIBIT I" (continued)
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL MEF MISCELLANEOUS (UNIT 051/05)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
7651	Desktop Pub/editor PT	5	\$26.43	\$32.11	n/a	n/a
4224	Development Specialist	5	\$28.57	\$34.72	\$2,285.60	\$2,777.60
1175	Dispatcher	5	\$20.11	\$24.42	\$1,608.80	\$1,953.60
3711	Engineerg Technician I	5	\$19.63	\$23.86	\$1,570.40	\$1,908.80
3712	Engineerg Technician II	5	\$23.40	\$28.41	\$1,872.00	\$2,272.80
3811	Engineerg Trainee PT	5	\$18.24	\$22.17	n/a	n/a
1396	Enterprise Net Tech I	5	\$26.56	\$32.30	\$2,124.80	\$2,584.00
1397	Enterprise Net Tech I PT	5	\$26.56	\$32.30	n/a	n/a
1398	Enterprise Net Tech II	5	\$29.45	\$35.81	\$2,356.00	\$2,864.80
1399	Enterprise Net Tech II PT	5	\$29.45	\$35.81	n/a	n/a
8203	Environment Serv Spec	5	\$33.08	\$40.23	\$2,646.40	\$3,218.40
1120	Examination Assistant PT	5	\$17.38	\$21.12	n/a	n/a
3231	Facility Attendant	5	\$17.73	\$21.54	\$1,418.40	\$1,723.20
3232	Facility Attendant PT	5	\$17.73	\$21.54	n/a	n/a
3236	Facility Snd & Lt Tech	5	\$21.73	\$26.43	\$1,738.40	\$2,114.40
3235	Facility Snd & Lt Tech PT	5	\$21.73	\$26.43	n/a	n/a
6160	Food Service Coordinator PT	5	\$18.65	\$22.67	n/a	n/a
1381	Geographic Systms Spec I	5	\$23.06	\$28.03	\$1,844.80	\$2,242.40
1383	Geographic Systms Spec II	5	\$28.19	\$34.27	\$2,255.20	\$2,741.60
7114	Gerontology Specialist	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
7115	Gerontology Specialist PT	5	\$22.29	\$27.08	n/a	n/a
2321	Hazardous Mat Insp I	5	\$31.84	\$38.70	\$2,547.20	\$3,096.00
2322	Hazardous Mat Insp II	5	\$35.11	\$42.67	\$2,808.80	\$3,413.60
3781	Instrument Person	5	\$26.70	\$32.44	\$2,136.00	\$2,595.20
1272	Investigator Collector I	5	\$25.30	\$30.74	\$2,024.00	\$2,459.20
1273	Investigator Collector II	5	\$29.30	\$35.61	\$2,344.00	\$2,848.80
3254	Kennel Attendant	5	\$16.55	\$20.12	\$1,324.00	\$1,609.60
3257	Kennel Attendant PT	5	\$16.55	\$20.12	n/a	n/a
6162	Kitchen Aide PT	5	\$12.10	\$14.69	n/a	n/a
5111	Laboratory Tech I	5	\$22.17	\$26.96	\$1,773.60	\$2,156.80
5112	Laboratory Tech I PT	5	\$22.17	\$26.96	n/a	n/a
5113	Laboratory Tech II	5	\$26.56	\$32.30	\$2,124.80	\$2,584.00
5114	Laboratory Tech II PT	5	\$26.56	\$32.30	n/a	n/a
2241	Latent Fingprt Examr I	5	\$23.62	\$28.71	\$1,889.60	\$2,296.80
2242	Latent Fingprt Examr II	5	\$26.82	\$32.60	\$2,145.60	\$2,608.00
8042	Legislative Secretary	5	\$24.68	\$29.99	\$1,974.40	\$2,399.20
8043	Legislative Secretary PT	5	\$24.68	\$29.99	n/a	n/a
6231	Librarian I	5	\$27.36	\$33.25	\$2,188.80	\$2,660.00
6232	Librarian I PT	5	\$27.36	\$33.25	n/a	n/a
6233	Librarian II	5	\$29.27	\$35.60	\$2,341.60	\$2,848.00
6234	Librarian II PT	5	\$29.27	\$35.60	n/a	n/a
6217	Library Aide PT	5	\$10.10	\$12.29	n/a	n/a
6221	Library Assistant	5	\$24.55	\$29.84	\$1,964.00	\$2,387.20
6222	Library Assistant PT	5	\$24.55	\$29.84	n/a	n/a
6213	Library Clerk	5	\$17.89	\$21.74	\$1,431.20	\$1,739.20
6214	Library Clerk PT	5	\$17.89	\$21.74	n/a	n/a
6212	Library Page PT	5	\$14.44	\$17.57	n/a	n/a
6237	Literacy Program Specialist PT	5	\$26.43	\$32.11	n/a	n/a
6238	Literacy Program Specist	5	\$26.43	\$32.11	\$2,114.40	\$2,568.80

“EXHIBIT I” (continued)
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL MEF MISCELLANEOUS (UNIT 051/05)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
1119	Mail Processor	5	\$17.11	\$20.82	\$1,368.80	\$1,665.60
4233	Marketing/Public Out Rep I PT	5	\$26.31	\$32.00	n/a	n/a
4235	Marketing/Public Out Rep II PT	5	\$29.01	\$35.28	n/a	n/a
4231	Marketing/Public Outrch Rep I	5	\$26.31	\$32.00	\$2,104.80	\$2,560.00
4234	Marketing/Public Outrch Rep II	5	\$29.01	\$35.28	\$2,320.80	\$2,822.40
5126	Medical Assistant	5	\$19.78	\$24.04	\$1,582.40	\$1,923.20
5127	Medical Assistant, Sr	5	\$25.26	\$30.71	\$2,020.80	\$2,456.80
1111	Messenger Clerk	5	\$16.31	\$19.81	\$1,304.80	\$1,584.80
5115	Microbiologist	5	\$29.74	\$36.15	\$2,379.20	\$2,892.00
1324	Network Technician I	5	\$26.56	\$32.30	\$2,124.80	\$2,584.00
1325	Network Technician I PT	5	\$26.56	\$32.30	n/a	n/a
1326	Network Technician II	5	\$29.45	\$35.81	\$2,356.00	\$2,864.80
1327	Network Technician II PT	5	\$29.45	\$35.81	n/a	n/a
5122	Nurse	5	\$31.49	\$38.29	\$2,519.20	\$3,063.20
5128	Nurse Practitioner	5	\$38.29	\$46.54	\$3,063.20	\$3,723.20
5129	Nurse Practitioner PT	5	\$38.29	\$46.54	n/a	n/a
5123	Nurse PT	5	\$31.49	\$38.29	n/a	n/a
1126	Office Specialist I	5	\$16.71	\$20.32	\$1,336.80	\$1,625.60
1128	Office Specialist I PT	5	\$16.71	\$20.32	n/a	n/a
1130	Office Specialist II	5	\$17.89	\$21.74	\$1,431.20	\$1,739.20
1133	Office Specialist II PT	5	\$17.89	\$21.74	n/a	n/a
3954	Permit Specialist	5	\$21.73	\$26.43	\$1,738.40	\$2,114.40
4121	Planner I	5	\$25.77	\$31.32	\$2,061.60	\$2,505.60
4122	Planner II	5	\$30.43	\$36.97	\$2,434.40	\$2,957.60
4123	Planner II PT	5	\$30.43	\$36.97	n/a	n/a
4111	Planning Technician	5	\$22.51	\$27.37	\$1,800.80	\$2,189.60
4112	Planning Technician PT	5	\$22.51	\$27.37	n/a	n/a
1181	Police Data Spec I	5	\$18.41	\$22.39	\$1,472.80	\$1,791.20
1182	Police Data Spec I PT	5	\$18.41	\$22.39	n/a	n/a
1183	Police Data Spec II	5	\$20.79	\$25.27	\$1,663.20	\$2,021.60
1184	Police Data Spec II PT	5	\$20.79	\$25.27	n/a	n/a
1521	Police Property Spec I	5	\$19.25	\$23.41	\$1,540.00	\$1,872.80
1522	Police Property Spec II	5	\$20.11	\$24.42	\$1,608.80	\$1,953.60
1223	Prin Account Clerk	5	\$23.96	\$29.14	\$1,916.80	\$2,331.20
1121	Prin Office Specialist PT	5	\$22.29	\$27.08	n/a	n/a
3958	Property Manager I	5	\$27.32	\$33.22	\$2,185.60	\$2,657.60
3959	Property Manager II	5	\$33.22	\$40.39	\$2,657.60	\$3,231.20
8515	Public Safety Disp I	5	\$23.52	\$28.59	\$1,881.60	\$2,287.20
8535	Public Safety Disp I PT	5	\$23.52	\$28.59	n/a	n/a
8514	Public Safety Disp II	5	\$28.03	\$34.07	\$2,242.40	\$2,725.60
8534	Public Safety Disp II PT	5	\$28.03	\$34.07	n/a	n/a
6365	Puppeteer PT	5	\$11.66	\$14.16	n/a	n/a
3966	Real Property Agent I	5	\$26.56	\$32.30	\$2,124.80	\$2,584.00
3967	Real Property Agent II	5	\$32.30	\$39.26	\$2,584.00	\$3,140.80
6108	Recreation Leader	5	\$13.35	\$16.24	\$1,068.00	\$1,299.20
6109	Recreation Leader PT	5	\$13.35	\$16.24	n/a	n/a
6122	Recreation Progm Spec	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
6123	Recreation Progm Spec PT	5	\$22.29	\$27.08	n/a	n/a
6114	Recreation Specialist	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40

“EXHIBIT I” (continued)
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL MEF MISCELLANEOUS (UNIT 051/05)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
6115	Recreation Specialist PT	5	\$22.29	\$27.08	n/a	n/a
3423	Regional Park Aide FT	5	\$11.66	\$14.16	\$932.80	\$1,132.80
3421	Regional Park Aide PT	5	\$11.66	\$14.16	n/a	n/a
4236	Sales Representative	5	\$29.01	\$35.28	\$2,320.80	\$2,822.40
4237	Sales Representative PT	5	\$29.01	\$35.28	n/a	n/a
2441	School Crossing Guard PT	5	\$14.35	\$17.45	n/a	n/a
2443	School Safety Coordinator	5	\$19.06	\$23.20	\$1,524.80	\$1,856.00
1156	Secretary	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
1155	Secretary PT	5	\$22.29	\$27.08	n/a	n/a
2431	Security Officer	5	\$19.43	\$23.62	\$1,554.40	\$1,889.60
2432	Security Officer PT	5	\$19.43	\$23.62	n/a	n/a
1219	Senr Account Clerk	5	\$21.73	\$26.43	\$1,738.40	\$2,114.40
1221	Senr Account Clerk PT	5	\$21.73	\$26.43	n/a	n/a
3213	Senr Custodian	5	\$19.25	\$23.41	\$1,540.00	\$1,872.80
3233	Senr Facility Attendant	5	\$20.19	\$24.54	\$1,615.20	\$1,963.20
2243	Senr Latent Fngprmt Exmr	5	\$30.47	\$37.02	\$2,437.60	\$2,961.60
6215	Senr Library Clerk	5	\$20.60	\$25.05	\$1,648.00	\$2,004.00
6216	Senr Library Clerk PT	5	\$20.60	\$25.05	n/a	n/a
1135	Senr Office Specialist	5	\$20.01	\$24.34	\$1,600.80	\$1,947.20
1137	Senr Office Specialist PT	5	\$20.01	\$24.34	n/a	n/a
6110	Senr Recr Leader	5	\$19.15	\$23.27	\$1,532.00	\$1,861.60
6111	Senr Recr Leader PT	5	\$19.15	\$23.27	n/a	n/a
6112	Senr Recr Leader Teach	5	\$18.79	\$22.84	\$1,503.20	\$1,827.20
6113	Senr Recr Leader Teach PT	5	\$18.79	\$22.84	n/a	n/a
1514	Senr Warehouse Worker	5	\$21.10	\$25.64	\$1,688.00	\$2,051.20
6355	Senr Zoo Keeper	5	\$19.15	\$23.27	\$1,532.00	\$1,861.60
1622	Staff Specialist	5	\$24.55	\$29.84	\$1,964.00	\$2,387.20
1624	Staff Specialist PT	5	\$24.55	\$29.84	n/a	n/a
1212	Supply Clerk	5	\$19.25	\$23.41	\$1,540.00	\$1,872.80
6146	Swimming Pool Manager PT	5	\$17.81	\$21.65	n/a	n/a
1338	Systems Apps Progrmr I	5	\$26.56	\$32.30	\$2,124.80	\$2,584.00
1339	Systems Apps Progrmr I PT	5	\$26.56	\$32.30	n/a	n/a
1341	Systems Apps Progrmr II	5	\$29.45	\$35.81	\$2,356.00	\$2,864.80
1342	Systems Apps Progrmr II PT	5	\$29.45	\$35.81	n/a	n/a
7112	Therapeutic Specialist	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
3751	Traffic Checker I	5	\$15.69	\$19.09	\$1,255.20	\$1,527.20
3752	Traffic Checker I PT	5	\$15.69	\$19.09	n/a	n/a
3753	Traffic Checker II	5	\$16.72	\$20.32	\$1,337.60	\$1,625.60
3754	Traffic Checker II PT	5	\$16.72	\$20.32	n/a	n/a
1693	Training Specialist	5	\$27.48	\$33.41	\$2,198.40	\$2,672.80
8032	Video/Multimedia Producer	5	\$27.48	\$33.41	\$2,198.40	\$2,672.80
6328	Volunteer Coordinator (FT)	5	\$21.54	\$26.19	\$1,723.20	\$2,095.20
6329	Volunteer Coordinator (PT)	5	\$21.54	\$26.19	n/a	n/a
1511	Warehouse Worker I	5	\$18.98	\$23.09	\$1,518.40	\$1,847.20
1512	Warehouse Worker I PT	5	\$18.98	\$23.09	n/a	n/a
1513	Warehouse Worker II	5	\$19.74	\$23.99	\$1,579.20	\$1,919.20
3631	Water Meter Reader	5	\$18.54	\$22.50	\$1,483.20	\$1,800.00
3634	Water Meter Reader PT	5	\$18.54	\$22.50	n/a	n/a
1431	Workers Comp Clms Adj I	5	\$25.67	\$31.21	\$2,053.60	\$2,496.80

“EXHIBIT I” (continued)
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL MEF MISCELLANEOUS (UNIT 051/05)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
1434	Workers Comp Clms Adj II	5	\$28.19	\$34.27	\$2,255.20	\$2,741.60
8067	Youth Outreach Specialist (FT)	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
8063	Youth Outreach Worker I (FT)	5	\$15.60	\$18.98	\$1,248.00	\$1,518.40
8064	Youth Outreach Worker I (PT)	5	\$15.60	\$18.98	n/a	n/a
8065	Youth Outreach Worker II (FT)	5	\$19.15	\$23.27	\$1,532.00	\$1,861.60
8066	Youth Outreach Worker II (PT)	5	\$19.15	\$23.27	n/a	n/a
6357	Zoo Curator	5	\$25.54	\$31.05	\$2,043.20	\$2,484.00
6351	Zoo Keeper Aide FT	5	\$11.66	\$14.16	\$932.80	\$1,132.80
6352	Zoo Keeper Aide PT	5	\$11.66	\$14.16	n/a	n/a
6353	Zoo Keeper FT	5	\$15.46	\$18.79	\$1,236.80	\$1,503.20

“EXHIBIT I”
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL SUPERVISION MEF (UNIT 052/07)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
1225	Accounting Tech	5	\$26.19	\$31.83	\$2,095.20	\$2,546.40
1227	Accounting Tech PT	5	\$26.19	\$31.83	n/a	n/a
7121	Amusement Park Supvr	5	\$29.71	\$36.12	\$2,376.80	\$2,889.60
3251	Animal Svcs Officer, Sr	5	\$23.48	\$28.55	\$1,878.40	\$2,284.00
5109	Aquatic Toxicologist	5	\$36.14	\$43.94	\$2,891.20	\$3,515.20
6148	Aquatics Coord, Thera PT	5	\$19.25	\$23.41	n/a	n/a
6326	Archivist	5	\$30.75	\$37.39	\$2,460.00	\$2,991.20
6124	Community Coordinator	5	\$27.62	\$33.58	\$2,209.60	\$2,686.40
1388	Enterprise Net Engnr	5	\$34.91	\$42.44	\$2,792.80	\$3,395.20
1389	Enterprise Net Engnr PT	5	\$34.91	\$42.44	n/a	n/a
6330	Events Coordinator I	5	\$26.19	\$31.83	\$2,095.20	\$2,546.40
6340	Events Coordinator I PT	5	\$26.19	\$31.83	n/a	n/a
6332	Events Coordinator II	5	\$28.84	\$35.07	\$2,307.20	\$2,805.60
6333	Events Coordinator II PT	5	\$28.84	\$35.07	n/a	n/a
3225	Facility Crew Supervisor	5	\$21.87	\$26.56	\$1,749.60	\$2,124.80
7125	Gerontology Supervisor	5	\$29.71	\$36.12	\$2,376.80	\$2,889.60
7129	Gerontology Supervisor PT	5	\$29.71	\$36.12	n/a	n/a
1328	Network Engineer	5	\$34.91	\$42.44	\$2,792.80	\$3,395.20
1329	Network Engineer PT	5	\$34.91	\$42.44	n/a	n/a
3955	Permit Specialist, Sr.	5	\$24.20	\$29.42	\$1,936.00	\$2,353.60
1116	Prin Office Specialist	5	\$22.29	\$27.08	\$1,783.20	\$2,166.40
6363	Puppet Theater Coord FT	5	\$17.22	\$20.92	\$1,377.60	\$1,673.60
6364	Puppet Theater Coord PT	5	\$17.22	\$20.92	n/a	n/a
7124	Recreation Supervisor	5	\$29.71	\$36.12	\$2,376.80	\$2,889.60
7132	Recreation Supervisor PT	5	\$29.71	\$36.12	n/a	n/a
5118	Research Chemist	5	\$34.41	\$41.84	\$2,752.80	\$3,347.20
5119	Research Microbiologist	5	\$34.41	\$41.84	\$2,752.80	\$3,347.20
5244	Senr Airport Noise Spec	5	\$28.57	\$34.72	\$2,285.60	\$2,777.60
3514	Senr Airport Oper Spec	5	\$24.79	\$30.14	\$1,983.20	\$2,411.20
3515	Senr Airport Oper Spec, PT	5	\$24.79	\$30.14	n/a	n/a
1543	Senr Buyer	5	\$28.73	\$34.91	\$2,298.40	\$2,792.80
1178	Senr Communic Svcs Oper	5	\$22.50	\$27.34	\$1,800.00	\$2,187.20
1335	Senr Computer Operator	5	\$22.62	\$27.48	\$1,809.60	\$2,198.40
3772	Senr Construction Insp	5	\$32.28	\$39.25	\$2,582.40	\$3,140.00
1186	Senr Crime Data Specialst	5	\$26.98	\$32.78	\$2,158.40	\$2,622.40
1171	Senr Dispatcher	5	\$22.50	\$27.34	\$1,800.00	\$2,187.20
3714	Senr Engineering Tech	5	\$28.84	\$35.07	\$2,307.20	\$2,805.60
3230	Senr Facility Sd & Lt Tec	5	\$27.07	\$32.91	\$2,165.60	\$2,632.80
4124	Senr Planner	5	\$35.24	\$42.84	\$2,819.20	\$3,427.20
1185	Senr Police Data Spec	5	\$25.91	\$31.49	\$2,072.80	\$2,519.20
1523	Senr Police Property Spec	5	\$21.97	\$26.72	\$1,757.60	\$2,137.60
1367	Senr Process & Syst Spec	5	\$34.91	\$42.44	\$2,792.80	\$3,395.20
8513	Senr Pub Safe Dispatch	5	\$32.44	\$39.46	\$2,595.20	\$3,156.80
8533	Senr Pub Safe Dispatch PT	5	\$32.44	\$39.46	n/a	n/a
2416	Senr Security Officer	5	\$23.74	\$28.84	\$1,899.20	\$2,307.20
1139	Senr Supvr, Administration	5	\$29.04	\$35.31	\$2,323.20	\$2,824.80
1345	Senr Systms Apps Prgmr	5	\$34.91	\$42.44	\$2,792.80	\$3,395.20
1346	Senr Systms Apps Prgmr PT	5	\$34.91	\$42.44	\$2,792.80	\$3,395.20
3629	Senr Water Meter Reader	5	\$22.08	\$26.83	\$1,766.40	\$2,146.40
1433	Senr Works Comp Clms Adj	5	\$33.91	\$41.23	\$2,712.80	\$3,298.40
8026	Supervg Police Data Spec	5	\$31.49	\$38.29	\$2,519.20	\$3,063.20
8512	Supervg Pub Safety Disp	5	\$37.59	\$45.67	\$3,007.20	\$3,653.60

"EXHIBIT I" (continued)
SALARY RANGES EFFECTIVE July 1, 2004
GENERAL SUPERVISION MEF (UNIT 052/07)

Job Code	Classification	Steps	1st Step Hrly Rate	Top Step Hrly Rate	1st Step Biweekly	Top Step Biweekly
1138	Supervisor, Administration	5	\$24.55	\$29.84	\$1,964.00	\$2,387.20
3782	Survey Field Suprv	5	\$29.98	\$36.46	\$2,398.40	\$2,916.80
7126	Therapeutic Supervisor	5	\$29.71	\$36.12	\$2,376.80	\$2,889.60
1517	Warehouse Supervisor	5	\$23.29	\$28.30	\$1,863.20	\$2,264.00

"EXHIBIT II"
SUBSTANCE ABUSE PROGRAM

Purpose. It is the policy of the City of San José 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.

This policy provides guidelines for self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use and for-cause alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. 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 José.

Application.

A. Personnel

1. Full-time and permanent, benefited part-time employees represented by: **Municipal Employees Federation, AFSCME, Local No. 101.**

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 could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties when 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 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 head and may request Union representative;
- 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 twenty-four (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 directing 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. The process for directing an employee to submit to a drug and/or alcohol test is outlined below (numbers 1 - 7).

Additionally, if an employee believes an employee not under his/her supervision has a problem and should be tested or referred, he/she should contact the Office of Employee Relations, who will notify the Department Director. Should the Department Director concur that the employee appears to be in violation of the policy, the following procedure shall immediately be applied shall also apply:

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 Documentation of Employee Misconduct form.
 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 Medical Services or emergency room 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 direction 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.
 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. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow- 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. All records and documentation shall be purged.
 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, the 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 percent (30%) 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.

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.

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 head 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, including employee discipline; (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. Attachment A contains procedures for handling testing for drugs if the test is conducted by Employee Medical 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 test if the amount exceeds the minimum detection levels defined in Attachment A, H.17, and in the confirming test above the criteria in Section H.19.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.05g.

Substance Abuse Treatment. The City will make substance abuse treatment available to employees represented by the Municipal Employees Federation 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. The first time an employee tests positive on a drug test, the department head 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 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, including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. 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 30% 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.

City of San José
Substance Abuse Policy
Municipal Employee Federation (MEF)

SCOPE OF SERVICES

1. Provide gatekeeping and case management chemical dependency problems of employees represented by the **Municipal Employees Federation (MEF), AFSCME, Local No. 101**. This service is to include assessment, referral to high quality treatment facilities, pre-certification, and post-treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

COMPONENTS

1. Assessment

Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment. (see Tracks A, B, C). Treatment options include:

Structured Inpatient Program: Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service, which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

Structured Outpatient Program: Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Alanon: When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral

Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to insure that the most cost effective recommendations are made. Referrals are made to quality programs to insure the best chance of success.

3. Pre-certification

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self-admission be initiated, **EAP** will evaluate the employee within forty-eight (48) hours and make a recommendation for continued treatment, and notify the City of San José Employee

Services/Benefits Division. The section on Gatekeeping Procedures outlines the steps **EAP** will take in this process.

4. Case Management

EAP counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team.
- Continued counseling with client and family as necessary after discharge from treatment facility for one year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both
- Treatment aftercare program
- **EAP** case management for up to a year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

Treatment will be covered if it is provided by one of **EAP**'s recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

6. Tracks

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

TRACK A: Assessment at EAP and Referral to Treatment facility

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Employee Services/Benefits Division.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
 2. The program should contact City of San José Employee Services/Benefits Division to confirm eligibility.

- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
- Treatment facility
 - City of San José Employee Services/Benefits Division
 - Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
 - Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
 - Keep in contact on a weekly basis via telephone or letter.
 - Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via the Union or the **EAP**.
- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six (6) months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:
- If the client fails to attend aftercare.
 - No more than two (2) unexcused absences.
 - Reasons for non-attendance must be cleared through **EAP** therapist.
 - Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.
- I. Notify City of San José Employee Services/Employee Benefits and the client, in writing, when the "treatment program" is terminated or completed.

TRACK B: Emergency Admission to Treatment Facility

- A. Employee presents to a treatment facility. Facility calls City of San José Employee Services/Employee Benefits to determine eligibility and coverage.
- B. City of San José Employee Services/Employee Benefits will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.
- C. **EAP** will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
- the treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A.
 - the treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.

- E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

TRACK C: Second Treatment

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

RECOMMENDED TREATMENT PROGRAM

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost.

EAP will assist in the negotiation of preferred provider rates at the City's request.

The City of San José will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San José each month the contracted rate per covered employee for all gatekeeping services. The City of San José will be responsible for the cost of all recommended treatment services for covered employees.

“EXHIBIT III”
PROCESS FOR LAYOFF DISPUTE RESOLUTIONS

In lieu of the traditional process for handling grievances, the following process is recommended for handling specified disputes related to the layoff process.

Step One: Research and Discovery

1. Employee contacts Employee Services regarding concern. Employee fills out a form describing issue and requesting research.
2. Employee Services researches concern, and, based on data, makes a decision.

Step Two: Review and Resolution

If the employee is not satisfied with Employee Services' ruling, and the issue is appealable through the dispute process, the employee can request an additional review by the Director of Employee Relations or designee and a Union Representative (Business Agent or high ranking Officer).

1. Employee contacts their Union regarding the concern.
2. The Union notifies Employee Relations of the situation.
3. Employee Relations schedules a meeting date in Employee Services to review documents in question.
4. The Director of Employee Relations or designee, Union Representative and employee meet in the Employee Services Department to review documents. An Employee Services representative is available for background and information.
5. Based on data, and after discussion and consultation the Union representative, the Director of Employee Relations or designee makes a bench decision. If the Union does not agree with the decision, the issue can continue through the dispute process and appeal may be filed to Step 3.

Step Three: Appeal Process

If the employee is still not satisfied, and the issue is appealable through the dispute process, the employee can appeal to a Review Board. The Review Board is comprised of:

- Director of Employee Relations or one designee.
- One Union Representative - Business Agent or high ranking Officer (one from each affected Union).
- One Outside Neutral Party (same individual for all cases to ensure consistency).

The outside neutral party will decide the final ruling only if the Director of Employee Relations or designee and Union Representative have opposing positions. All Review Board rulings are final.

1. Employee contacts Union regarding appeal.
2. Union notifies Employee Relations of situation.
3. Employee Relations schedules hearing date with outside neutral party.
4. Employee presents their case to the Review Board.
5. Employee Services presents their case to the Review Board.

6. Review Board hears testimony, reviews document, and makes a final bench decision.

Deadlines

Step I Request for Step 1: An employee has five (5) working days, following receipt of a layoff notice, to complete a request for information form in Employee Services. This action will result in Step 1, Research and Discovery.

Response to Request: Employee Services has three (3) days, from the date of the request, to investigate records and respond to the employee.

Step II Request for Step 2: An employee has two (2) working days, following Step I response from Employee Services, to file a request for Step 2 with Employee Relations.

Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule the review meeting with Employee Services, a Union representative and the employee.

Step III Request for Step 3: An employee has three (3) working days, following the Step II decision, to file a request for Step 3 with Employee Relations.

Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule a hearing date with the Review Board.