

MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

**POLICE OFFICERS ASSOCIATION
UNIT 2**



DECEMBER 23, 2018 – DECEMBER 18, 2021

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MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
POLICE OFFICERS ASSOCIATION, UNIT # 2
December 23, 2018 – December 18, 2021

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In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979, entitled "Employer-Employee Relations", this Memorandum of Understanding (MOU) constitutes the results of discussions between the City Management Staff (City) and the formally recognized representatives of the Santa Clara Police Officers Association (Association) on all matters within the scope of representation, December 23, 2018 through December 18, 2021 for the classifications of Police Officer, Police Sergeant, Police Lieutenant, and Police Recruit.

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It is hereby proposed and recommended that the City Council adopt the following, effective as indicated:

1. TOTAL COMPENSATION (SUSPENDED FOR THE TERM OF THIS MOU)

A. For the purposes of this agreement, total compensation is defined to include the following items:

- 1) Salary
- 2) Fringe Benefits:
 - a. Retirement**
 - b. Holiday Pay*
 - c. Vacation Pay*
 - d. Uniform Allowance**
 - e. Mandatory Health Ins**
 - f. PERS Health Fund**
 - g. Other Pay
 - h. Retiree Medical
 - i. VEBA
 - j. Deferred Compensation

**Movement allowed only under the provisions agreed to in this or existing MOU's.

*These elements are directly tied to salary and move as a function of salary. No independent movement is allowed in these element areas.

- 3) Insurance
 - a. Life
 - b. Health
 - c. Dental
 - d. Vision
 - e. Psychological Counseling

B. Total compensation as defined above will be determined by computing the total compensation at such time as to permit salary changes for the upcoming MOU year afforded similarly represented classifications of Police Officer in comparable agencies of Palo Alto, Hayward, Milpitas, Redwood City, and Mountain View (benchmark classification) and obtaining the total compensation afforded those comparable agencies.

C. It will be a requirement of the Association to allocate each year in advance, in accordance with the attached tabular description, and consistent with this MOU, the distribution of total compensation monies within the following element areas as noted in Section 1A: 1) salary, 2) fringe benefits, 3)

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Mandatory Health Allocation/dental/counseling as described in section 36, and 4) medical insurance premiums, subject to the requirement that the amount of the Kaiser single health insurance premium, including the Public Employees Medical and Hospital Care Act ("PEMHCA") minimum, be included in the mandatory section of the total compensation array. Distribution of total compensation monies is to be made based upon: 1) the total compensation array for the benchmark classification, and 2) the maximum premiums payable by the City, and not actual premiums to be paid by City, except as noted elsewhere in this MOU.

- D. The total compensation allocation currently in effect, including the City's mandatory contribution rate to the Public Employee's Retirement System (CalPERS), will be the total compensation allocation upon which subsequent adjustment of total compensation is to be based and will be referred to as Base Total Compensation.

2. WAGE ADJUSTMENT (ADJUSTMENT OF TOTAL COMPENSATION METHOD SUSPENDED FOR THIS MOU)

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- A. The following language concerning the 12/15-12/16 MOU year from the 12/14 – 12/16 MOU is retained as a historical reference to show how the City and the Association in certain past years have addressed changes in the employer CalPERS retirement rate, including on the Salary Adjustment Form, have utilized a benchmark classification of Police Officer, and adjusted represented employees' total compensation using certain specified survey agencies.

12/15 – 12/16 MOU YEAR. Effective retroactive to December 25, 2015, there will be a 3.1% salary increase for all represented classifications. The City will pay the full CalPERS employer rate increase from FY 2014 - 15 to FY 2015 – 16 during the 2015-16 fiscal year so this increase will not have an adverse impact on salary. The City also will pay any increase in the cost of the Kaiser employee only rate for the 2016 calendar year so this increase will not have an adverse impact on salary.

In addition to the 3.1% salary increase described in the prior paragraph, the City shall prepare a survey of the average total compensation as of October 1, 2015 of agreed-upon survey agencies using the benchmark classification of Police Officer as set forth in Section 1.B. Other than the survey agencies used, the methodology shall be the same as used in the negotiations for the 12/14-12/16 MOU. The City shall provide the survey information to the Association along with the percentage a Santa Clara Police Officer is above or below the survey average as of October 1, 2015 by November 30, 2015. If the total compensation on the survey for a Step 5 Santa Clara Police Officer is less than 5% above the survey average of total compensation in effect for the survey agencies as of October 1, 2015, the City will provide a further salary increase to represented employees equal to the amount needed to place Step 5 Santa Clara Police Officer at 5% above the survey average. If a Step 5 Santa Clara Police Officer is equal to or more than 5% above the survey average as of October 1, 2015, no further adjustment in salaries will be made (i.e. there will not be a downward adjustment).

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If a comparing agency adopts a total compensation adjustment after the City has adopted and implemented the total compensation allocation/salary adjustment form for the 2015 calendar year, and the effective date of the comparing agency's subsequently adopted total compensation adjustment is made effective on or before October 1, 2015, the City will re-calculate the percent that was needed to place a Step 5 Police Officer at 5% above the survey average as of October 1, 2015 and adjust represented employees' salaries accordingly.

Any recalculations prompted by the foregoing provisions will not entitle the Association to make any change in allocations to the total compensation array [i.e. Salary Adjustment Form] as specified in Item 1C of this agreement.

- B. Effective retroactive to December 23, 2018, for persons still employed on the date the City Council approved this 2018-2021 MOU, employees shall receive a five percent (5%) wage increase. For the December 2019–December 2020 MOU year, employees shall receive a wage increase equal to the increase needed to place a Santa Clara Police Officer at 5.5% above the total compensation average for the survey agencies as of January 1, 2020. For the December 2020 – December 2021 MOU year, employees shall receive the wage increase needed to place a Santa Clara Police Officer at 6% above the total compensation average for the survey agencies as of January 1, 2021. All surveys shall use data known and/or ascertainable based upon labor agreements approved by the agency's city council no later than December 1st, and to be effective on or before January 1st of the following calendar year.
- C. Prior to February 1 of each year of this MOU, if it is determined by the Santa Clara Police Officers Association and representatives of Management of the City of Santa Clara, that any of the classifications represented by the Association are 2.5% below the survey average in salary after the common salary adjustment afforded on the dates specified in Sections 2.B. and 2.C, the City of Santa Clara shall adjust such classifications to the nearest salary range to bring them as close as possible to 2.5% above the survey average of the current salary schedule in effect for classified police. This adjustment will become effective the first day of the first full pay period in February of each year.
- D. There will be no retirement enhancements during the term of this MOU.
- E. (SUSPENDED FOR THE TERM OF THIS MOU) It will be the prerogative of the Association to allocate, during the term of this MOU, total compensation monies among the element areas as defined in the foregoing. Specific retirement benefits, excluding City's payment of all or part of the represented employee's share of CalPERS contributions, as may be allowed by the Public Employees Retirement System may be added or deleted subject to the following conditions.

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- 1) All such changes will have equal application to all public safety personnel, including eligible members of the Fire Department, if the modification will increase the City contribution rate for public safety employees.
 - 2) The Association will assume the responsibility of coordinating with the eligible members of the Fire Bargaining Units and Police Management Unit any desired retirement modifications prior to submission to the City, and be prepared to ensure the City, in writing, that such modifications are consistent with the wishes of the majority of eligible personnel in each of the Public Safety Units.
 - 3) A minimum of nine (9) calendar months advance notice will be given the City, in writing, specifying the nature of the desired changes.
 - 4) Any cost associated with obtaining the proposed retirement benefit such as actuarial valuations or administrative expenses imposed by CalPERS shall be paid by the Police and Fire units. Before any such costs are incurred, representatives of one of the two units must assume the responsibility of reimbursing the City for all related costs upon demand.
- F. It is recognized by both parties to this agreement that it is their mutual responsibility to independently verify, to the extent possible, the accuracy of the information upon which total compensation adjustments are made. Should it be discovered by either party that adjustment(s) to salary and fringe benefits are based on erroneous information or has been erroneously computed, the necessary corrective action will be taken as soon as practical after the discovery and notice of the error has been given. It is the mutual responsibility of both parties to report any suspected error immediately upon discovery to the other party. However, the period for which there will be a right to recover any monies which are either overpaid by the City or underpaid to the employee shall be limited to an adjustment period of up to 90 calendar days from the date the error was first reported to the other party. The corrective action will be taken even in circumstances where the error may bridge successive MOU's, but the recovery will still be limited to amounts owed or owing during the prior 90 calendar days. The 90 calendar day period will begin upon the date of written notification by personal service upon the other party.
- Right of recovery by the City of overpayment shall be limited to recovery over the same period as the overpayment was made. Said repayment will begin with the next paycheck following final determination of the amount to be repaid. Underpayment to the employee shall be made by the City in a lump sum of the amount owed on the next regular paycheck following final determination of the amount to be paid.

POLICE OFFICERS ASSOCIATION DEFINITIONS

1. Top Step Salary -

Maximum step in the monthly salary range for classification (excluding

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longevity steps).

2. Life, Health, Dental, Vision, LTD, [VEBA, Retirement Medical](#) and other Insurance -

Maximum agency monthly contribution per employee to insurance premiums as defined in Item 1A3 and 36 plus maximum agency monthly contribution to other fringe benefit insurance premiums. [For retiree medical, the maximum amount to which an active employee would be entitled upon retirement.](#)

3. Retirement -

Maximum agency monthly contribution to retirement for which any current employee or retiree may be eligible. [Deferred compensation will be factored separately from pension contributions.](#)

4. Holiday Pay -

Number of paid holiday hours allowed by agency per year times hourly salary rate of classification, divided by 12.

5. Vacation Pay -

Maximum number of annual paid vacation hours allowed by agency per employee upon completion of five (5) years' service times hourly salary rate for classification divided by 12.

6. Other -

Monthly salary equivalent of or maximum monthly agency contribution to other fringe benefits available to all full-time agency employees. To be eligible for inclusion in comparison data, such benefits of the comparing jurisdiction must be of a recurring nature or become part of their compensation base.

7. Psychological Counseling -

Actual dollar amount paid for this service during the prior fiscal year divided by the number of budgeted employees divided by 12.

8. POST Premium Pay -

Monthly amount paid for Advanced POST Certificate

9. Total Compensation -

The sum of Items 1 through 8 above.

Deleted: 10. Hourly Salary Rate -

Deleted: Top step salary as defined in Item 1 above times 12 divided by total number of regular work hours per year.

Deleted: 11. Regular Rate -

Deleted: The hourly rate plus applicable other compensation converted to an hourly rate, that the Fair Labor Standards Act requires to be included in the FLSA overtime rate.

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G. Within 60 days of City Council approval of this 12/18 – 12/21 MOU, the City and the Association will form a joint committee to consider modifications to the Total Compensation Survey criteria set forth above, including, but not limited to, utilizing a blended agency retirement contribution. Any changes to the Total Compensation Survey criteria as presented by the Association during negotiations are subject to mutual agreement by the City and the Association, and will be memorialized in writing via a side letter agreement.

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POLICE OFFICERS ASSOCIATION
TABULAR DESCRIPTION OF
ADJUSTMENT OF TOTAL COMPENSATION

December 2014 and December 2015	Association provides City with total compensation allocation to be in effect for the forthcoming calendar year.
December 2014 and December 2015	City adopts total compensation allocation as presented by Association and develops salary schedule to be in effect for the forthcoming calendar year.

3. CHANGES IN ASSIGNMENTS

It is the policy of the Chief of Police that job assignments and/or shifts for represented employees will be changed upon reasonable notice. Reasonable notice shall be deemed to be at least fourteen (14) calendar days prior to implementation of the change in assignment and/or shift.

Shift and assignment vacancies within the Police Department will be filled based primarily on Departmental needs, merit and seniority. Factors to be considered will include, but will not necessarily be limited to, work performance, adaptability, relationships with people, attendance and previous training.

Some assignments may require special abilities, work experience or education. These additional factors will also be considered when filling assignments identified as being more specialized.

If persons seeking the same assignments or shift are reasonably equal in the above listed factors, seniority will determine the final selection.

Shift and assignment vacancies will be open to all qualified employees. Adjustments within a Division may be made prior to a vacancy announcement.

All assignments and shift selections will be made by the Chief of Police.

4. CHEMICAL TESTING

It is the policy of the City of Santa Clara, the Santa Clara Police Department and

the Association to provide and maintain a drug and alcohol free work environment for all employees. The above parties recognize and agree that the duties, responsibilities and actions of a police officer may expose the City, the Department and its employees to possible civil or criminal liabilities in the area of drug and alcohol use. In order to address the above concerns, all parties agree as follows:

It will be the responsibility of any represented employee to comply with the Santa Clara Police Department policy on drug and alcohol use, and pursuant thereto, to submit to a blood test as appropriate and chosen by the involved employee when ordered by the Chief of Police or his/her designee. A breath test may be chosen if only alcohol is suspected. All chemical testing shall be administered in a medically approved manner and as soon as practical after being ordered, but no later than six (6) hours after the incident in the case of subsection A, B, C, or D listed below, whether the employee is on-duty or off-duty at the time of the occurrence whenever any of the following occur:

- A. Any incident in which a firearm is discharged by an employee, acting under the color of authority, and death or serious injury is likely to occur. Furthermore, unless the death or serious injury of another occurs, this section will not apply to incidents in which a firearm is discharged accidentally, as a warning shot, or at a dangerous or suffering animal. For the purpose of this section, the use of an extended range impact weapon is not defined as a firearm discharge unless used as deadly force.
- B. Any intentional use of any other deadly or dangerous weapon by an Officer, or an intentional act on the part of an Officer, which proximately causes the death or, or injury likely to produce death to another.
- C. Any traffic accident involving an employee operating a City-owned vehicle which results in death of another or any traffic accident involving an employee operating a City-owned vehicle which results in an injury likely to produce death to another and the employee appears to be the proximate cause of the accident.
- D. Any incident where the Chief of Police or his/her designee has a reasonable belief based upon objective symptoms that an employee is in violation of the departmental policy on drug or alcohol use. The verbal order to submit to a chemical test shall set forth the reasons for the test(s) and shall be followed at the time the test is administered by a written statement of the order.
- E. Any incident where the Chief of Police or his/her designee develops reasonable suspicion that an employee has used illegal drugs. Reasonable suspicion will be defined as that quantity of proof or evidence that is more than a hunch, but less than probable cause and must be based on objective and articulable facts sufficient to lead a reasonable, prudent supervisor to suspect that an employee has used illegal drugs.

The following examples, alone or in combination, may constitute reasonable suspicion:

- 1) A pattern of documented abnormal or erratic behavior that indicates potential drug use;
 - 2) Direct observation of drug or alcohol use by a reliable and credible source;
 - 3) Corroborated information provided by a reliable and credible source that an employee has engaged in illegal drug use, the identity of which source shall be available to the employee and the Association.
- F. Employees being assigned to or being rotated out of specific assignments shall be subject to drug testing at the beginning and at the end of such assignments. These assignments include the Santa Clara County Special Enforcement Team (SCCSET) and the Drug Enforcement Agency (DEA) task force.

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

"Designee" is defined as any sworn Santa Clara Police Officer with the rank of Assistant Chief, Captain, Lieutenant or Sergeant.

In the event any portion of the Chemical Testing policy herein described in this MOU is in conflict with any non-negotiated policy, procedure, manual or directive, including the Police Operations Manual, the provisions of this MOU shall prevail.

Nothing in this section shall prevent any represented employee from voluntarily requesting or providing a chemical sample if deemed appropriate by the employee.

5. MOTORCYCLE CLEANING

Regular, on-duty time will be allowed for the cleaning of motorcycles, as assigned by the supervisor.

6. HOLIDAY PAY

The number of hours per year for holiday pay is 104 hours (equivalent to 13 work days based on eight (8) hours per day) for all represented employees.

[THIS PARAGRAPH IS SUSPENDED FOR THE TERM OF THIS MOU] It shall be the prerogative of Unit #2 to add one-half (1/2) day to the number of allocated holidays as of January 1st of the following calendar year. However, it is understood that should such an addition occur, it will be charged against prospective total compensation and payment for such addition will be prorated over the total number of annual pay periods as is the current practice.

Any additional permanent holidays designated by the City Council will be afforded represented employees. However, such holidays will be charged against prospective total compensation and payment for such holidays will be prorated over the total number of annual pay periods as is the current practice.

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7. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. SICK LEAVE

- 1) Employees shall accrue ninety-six (96) hours of sick leave per calendar year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.
- 2) Vacation and CTO may be used to supplement sick leave as available.
- 3) Sick leave will have an unlimited accrual for use. However, payment of sick leave at retirement will be limited to a maximum of 1,500 hours. For employees who have accumulated more than 1,500 hours, the employee shall not be permitted to receive payment at retirement for more than the hours they had on the books as of January 1, 2004, plus 1,500 hours.
- 4) Upon retirement, an employee with at least fifteen (15) years of City service shall be entitled to payment for a portion of their accumulated sick leave balance, as follows:
 - a. An employee with 15 years of City service shall be entitled to be paid 25% of the sick leave accumulated.
 - b. An employee with 20 years of City service shall be entitled to 50% of the sick leave accumulated.
 - c. An employee with 25 years or more service shall be entitled to 75% of the sick leave accumulated.

In lieu of receiving a sick-leave cash payout at retirement, the Association may vote to roll accrued sick leave hours into the employee's Voluntary Employee Beneficiary Association (VEBA) account, subject to Association compliance with Federal rules associated with employee contributions of sick leave to their VEBA accounts.

B. FAMILY SICK LEAVE

- 1) Not more than ~~fifty-six~~ (56) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

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C. PERSONAL LEAVE

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.

- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Requests to use personal leave shall be requested and may be granted or denied the same as vacation use requests.

The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

8. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section. Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent (including step, adoptive and in-law), child (including step, adoptive and in-law), sibling (including step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent (including step, adoptive and in-law), grandchild (including step, adoptive and in-law), aunt (including step, adoptive and in-law) or uncle (including step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of their own or a step, adoptive, or in-law great-grandparent, great-aunt, great-uncle, great-grandchild, niece, nephew, or first cousin.
- B. The bereavement leave benefit is based on each death occurrence and is not charged through the total compensation model.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

9. LIGHT BODY ARMOR

All currently issued light body armor shall be replaced at City expense five (5) years from the date of issue.

New or replacement body armor shall be of a Threat Level #2 classification and shall be replaced by the City upon the expiration of the manufacturer's warranty for that unmodified dealer issued unit. Any represented employee may purchase a vest of his/her choice provided that it meets or exceeds the City's warranty and protection requirement; however, the employee must bear the difference in cost between the allocation provided by the City and the actual cost of the vest of his/her choice. All body armor issued to represented employees shall be new and custom fitted to the individual officer. Body armor damaged in the course and scope of employment shall be replaced immediately if determined to be unserviceable. Current issue body armor damaged by misuse or gross

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negligence shall be replaced subject to a pro-rata formula based upon a five (5) year life expectancy. New or replacement body armor damaged by misuse or gross negligence shall be replaced subject to a pro rata formula based upon the manufacturer's warranty.

All vests, regardless of the purchaser, shall remain the property of the City.

The City will provide Threat Level #3A body armor to any represented employee who requests that it be provided. However, that employee is required to wear that equipment whenever he/she is performing general law enforcement duties outside the Police Administration Building and in uniform.

10. UNIFORM ALLOWANCE

A. The City shall contribute \$23.08 bi-weekly per represented employee as a uniform allowance, beginning after twelve (12) continuous months of City service.

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B. The City shall provide for the repair of or replacement, based on the remaining useful life of the uniform article, damaged while actively engaged in the line of duty.

C. The City shall provide, but retain ownership of, the following safety and special equipment, at no cost to the employee:

- 1) Duty handgun with three magazines and flashlight
- 2) OC Spray
- 3) One or two pairs of Handcuffs
- 4) 26-inch Baton and/or Collapsible Baton
- 5) Complete light weight synthetic basket-weave style gear including trouser belt, duty belt, holster, equipment holders, key strap and keepers
- 6) Flashlight and holder
- 7) Whistle
- 8) Approved Gas Mask with carry bag
- 9) Kevlar Helmet with face shield
- 10) Protective vest as outlined in Section 9 (Light Body Armor)
- 11) Conducted Electrical Weapon with holster and spare cartridge
- 12) Load Bearing Vest (including reimbursement up to \$500 upon showing a receipt or appropriate documentation for those that purchased a load bearing vest prior to Council approval of the 2016-18 MOU)

D. For employees assigned to motorcycle duty, the City shall provide, but retain ownership of, the following safety and special equipment, at no cost to the employee:

- 1) Motorcycle riding boots
- 2) Motorcycle riding breeches
- 3) Summer and winter gloves
- 4) Clear safety glasses

- E. All safety equipment supplied by the City damaged while actively engaged in the line of duty shall be replaced at no cost to the employee. Additionally, all safety equipment rendered unserviceable by normal wear and tear will be replaced at no cost to the employee.
- F. The City shall provide each employee a rain jacket and pants, and a set of BDUs with name tags and patches. If they subsequently are rendered unserviceable due to normal wear and tear, the employee is responsible to replace them. The City will replace them at no cost to the employee if damaged while actively engaged in the line of duty.

11. CITY PURCHASE OF DEPARTMENT BADGES

For any represented employee, the City will purchase and provide the employee's badge to the employee's survivors, providing such employee has separated from City service by reason of death in the line-of-duty.

12. PSYCHOLOGICAL COUNSELING

A represented employee may avail him/herself of a City designated psychologist or psychiatrist for stress counseling. It is understood between the parties that such counseling sessions will be confidential on a patient/doctor relationship with the following exception. If, in the opinion of the psychologist/psychiatrist, the employee being counseled represents a hazard to him/herself in the performance of his/her duties, or to others, such information will be provided the Chief of Police or designee on a confidential basis. It is further understood that such information may be the basis for the Chief of Police or designee to alter the assignment of the affected employee or to remove the employee from active duty, either on a temporary basis or on a permanent basis. Any removal from active duty will be in compliance with the rights and obligations of the City with full compliance with the rights of the affected employee. The City reserves the right to inquire into the circumstances of such mental disability to determine whether or not the alleged disability is job related.

The cost of the psychological counseling shall be borne by the City, with the following exceptions:

- A. For each visit, the employee will pay \$10.00.
- B. For all visits, the employee will submit a claim to any medical insurance carrier available to him/her that provides such coverage.
- C. The uninsured costs of all visits will be borne by the City.
- D. Prior to the 21st visit to the provider in any calendar year, the provider shall advise the City that a represented employee has used the service 20 times in that calendar year. The represented employee will not be identified. However, the City will have the right to assure itself that the represented employee is not placing the City or others at risk by being permitted to continue working.

- E. The amount paid by the employee and any insurance payments will be made directly to the psychologist/psychiatrist and, upon proof of payment by either or both the employee and the insurance carrier (if appropriate) to the psychologist/psychiatrist, the City will bear the cost of the remaining expense.

It will be the intention of the City to contract with psychologists/psychiatrists who have a demonstrated ability to counsel in the area of law enforcement job stress and who will agree to the terms and conditions set forth in this section of the MOU. It is understood by all parties to this agreement that the City will take all reasonable steps to implement this section but, if the City is unable for monetary, professional, ethical or legal reasons to successfully negotiate (a) contract(s) consistent with all provisions of this section, this section is then null and void.

13. OFFICERS' STATUS WHILE UNDER INVESTIGATION

All parties to this agreement recognize the occasional need for a change of assignment or the placing of an Officer on an off-duty status while under investigation by the City and/or the Police Department for alleged acts or omissions contrary to public law and/or City and/or Police Department Rules and Regulations. The intent of this section is that affected police officers will not suffer any economic loss during this investigation.

Listed below, in order of preference, will be the measures taken to remove the officer from his/her assignment during the course of an investigation, should the Chief of Police or designee feel that such action will be in the best interests of the department and the City.

- A. Change of assignment, days, or hours of work, or all or part of the foregoing. Such change will not be considered disciplinary in nature but merely a safeguard against further acts or omissions that would be detrimental to the department and the City.
- B. If a change of assignment, days, or hours of work is not feasible, an officer will be assigned time off with pay.

In all cases, the City agrees that all investigations will be conducted without undue delay and in the most expedient manner possible to prove or disprove the allegations. All non-criminal investigations by the City shall be completed within 30 days of being reported. If the investigation cannot be completed within the 30 day period, the employee and the Chief's office must be informed in writing, on a semi-monthly basis, of the current status of the investigation.

14. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

- A. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

<u>COMPLETED YEARS OF SERVICE</u>	<u>ANNUAL ACCRUAL</u>	<u>MAXIMUM ACCRUAL</u>
1 through 9 years	120 hours	400 hours
10 through 15 years	160 hours	400 hours
16 through 20 years	176 hours	400 hours
21 or more years	192 hours	400 hours

- B. Vacation may not be taken during the first six months of employment with the City. Following the completion of the first six months of employment represented employees are eligible to take all or a part of earned vacation that has been posted to his/her account on a bi-weekly basis, subject to the departmental vacation use policy.
- C. Vacation may be taken in 1/10th hour increments.
- D. Employees who reach the maximum number of accrued vacation hours cease to earn vacation during any bi-weekly pay period when their vacation balance has reached the maximum accrual allowed for their current service. Vacation time that is not accrued to an employee because he/she has reached the maximum accrual limit will be credited to the Emergency Paid Leave Pool established under this MOU.
- E. It is recognized that the long standing policy of the City as set forth in the Personnel and Salary Resolution provides that "Vacations shall be taken as determined by the Department Head, subject to the approval of the City Manager. Vacation eligibility will be as set forth in the current Memorandum of Understanding subject to any limitations contained therein." The Association agrees with and will abide by this provision irrespective of any method of vacation scheduling which may now be in place.
- F. On or before the last business day before December 25th each calendar year, an employee may make in writing on an "Irrevocable Vacation Cash-Out Election Form" to be provided by the City an irrevocable vacation cash-out election for up to two cash-outs of vacation the following calendar year. To be effective, the employee's written notice must be received by the Director of Human Resources or designee no later than the last business day before December 25th of the calendar year before the calendar year in which the employee wishes to cash-out vacation. The amount of vacation requested to be cashed out in the following calendar year may not exceed a total of sixty (60) hours, which number of vacation hours must have been earned in the following calendar year before it may be cashed out, and requires a sufficient balance of available accrued vacation. It is understood that an employee using vacation shall always use vacation earned in prior years first before using vacation earned in the current year. The date options available on the Election form provided by the City for the up to two cash-outs shall be the first full pay period in April, July, October or December.

This provision shall have no effect on an employee's right to cash out all his or her accrued vacation at the time of the employee's separation/retirement from City employment.

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- G. In lieu of receiving a vacation-leave cash payout at retirement, the Association may vote to roll accrued vacation leave hours into the employee's Voluntary Employee Beneficiary Association (VEBA) account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

15. COURT CALLBACK POLICY

Notwithstanding provisions of this agreement or any prior agreements, if a represented employee is placed on a standby status to appear in court by the Police Department, or on less than 24 hour direct advance notice by the District Attorney's Office, he/she will have the option of remaining on a standby status or reporting to the Police Department prepared to testify.

If the Officer elects to remain in a standby status, no compensation will be provided to him/her. Alternatively, the Officer may voluntarily report to the Watch Commander in uniform prepared to work the requisite number of compensable minimum hours, which shall be a minimum of three (3) hours at the overtime rate on a regularly scheduled workday and a minimum of four (4) hours at the overtime rate on a day off. A "day off" shall be defined as a day that is so indicated on the Department/ Division time sheet used for payroll purposes.

A represented employee who is called back to testify in court on his/her day off shall be granted a minimum of four (4) hours at the overtime rate. A "day off" shall be defined as a day that is so indicated on the Department/Division time sheet used for payroll purposes.

16. OVERTIME PAY

- A. Represented employees will be paid MOU overtime at the overtime rate of 1½ times their base rate of pay for any hours worked outside of their regular schedule. If the overtime overlaps with the beginning of their shift or occurs at the end of their shift, they will be compensated only for the actual time worked.

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- B. If preplanned overtime and/or callback overtime does not overlap the employee's regular work shift, the employee will be compensated for a minimum of three (3) hours at the overtime rate.

- C. Regarding compensatory time off employees are permitted to accrue in lieu of payment for overtime hours worked under Department policy, the maximum number of compensatory time off hours that may be accrued is 200 hours. Requests to use accrued compensatory time off shall be granted or denied using the same procedures and standards as vacation use requests, and will not be granted if doing so would cause the Department to incur overtime.

- D. The City has adopted a 28 day FLSA work period and threshold of 171 hours worked for purposes of Fair Labor Standards Act overtime eligibility. For all FLSA qualifying overtime hours, the City pays at 1.5 times the FLSA regular rate as defined by the FLSA and applicable law, with amounts owed by the

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City for FLSA overtime hours worked subject to any applicable credits under the FLSA and FLSA regulations.

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NOTE: This section does not apply to the Court Overtime, which is outlined in Section 15.

17. DOUBLETIME PAY

Continuous emergency overtime that extends the regular work shift for a represented employee for more than one and one-half (1.5) the number of hours of that shift (16.5 hours for an employee assigned to and 11-hour workday, 12 hours for an employee assigned to an 8 hour shift and 15 hours for an employee assigned to a 10 hour workday) will be paid at two times the represented employee's regular pay rate for the regular shift. If the extended time occurs on an overtime assignment, the double time rate will apply to the hourly rate upon which the time and one-half overtime rate is based.

Voluntary overtime which causes an employee to work continuously for more than 1/2 his/her shift will not qualify for the double time premium until more than 1 and 1/2 shift of continuous work, excluding any volunteer overtime, has been worked. Volunteer overtime is described as an assignment that is charged to a private business and only for those hours posted upon sign-up.

For all consecutive hours worked, including the regularly assigned shift, overtime will be paid at 1.5 times the regular rate for the first half shift of overtime and double time for all overtime hours in excess of the first half shift of overtime. If all or a portion of a second regular shift is worked without an interruption, straight time overtime will be paid in addition to the regular time for the hours worked on that shift.

18. REST PERIOD FOLLOWING EMERGENCY WORK

Any employee who works a minimum of four (4) hours of emergency overtime (including court appearances by an employee following a regularly scheduled overnight or graveyard shift) during the sleep period* will receive an eight (8) hour rest period commencing at the time of release from duty.

* Sleep Period: A period of time starting ten (10) hours and ending one (1) hour before an employee's regularly scheduled shift begins.

If the rest period overlaps his/her regular work shift in whole or in part, he/she will be paid at the straight-time rate for the time which falls within his/her regular work shift.

If the employee is called back to work during his/her rest period, a new rest period will commence at the conclusion of such work.

Notwithstanding the foregoing, if the employee is required to work during regular work hours on a work shift without having had a rest period, for which he/she has qualified as set forth above, he/she shall be paid at the overtime rate for all work performed until he/she has been relieved from duty for at least eight (8) hours.

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19. NIGHT SHIFT DIFFERENTIAL

Represented employees will be eligible for 5% night differential premium pay for all straight time hours worked between 5:00 p.m. and 7:00 a.m., provided that at least two (2) hours are worked during that time period.

20. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

The City has established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a Citywide defined contribution post-retirement medical benefit for employees in all bargaining units. The City will pay plan administrative expenses. Specific information regarding the Plan is referenced in the Plan Document.

A VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for medical insurance premiums and will not be taxed under current state and federal law. Withdrawals cannot be made for non-medical purposes.

Effective beginning December 16, 2007, the City began contributing \$50 per month to employees' VEBA trust accounts. Effective December 23, 2019, the City shall contribute \$100 per month to the employees' VEBA trust accounts. Per the City's contract with VEBA, VEBA's consulting fee will be deducted from plan participant's accounts.

Deleted: Effective May 2004, the City ceased making contributions to employee VEBA accounts and instead provided a Retiree Medical Reimbursement Benefit. Employee VEBA accounts remained and will remain open for other potential contributions.

21. RETIREE MEDICAL REIMBURSEMENT BENEFIT

The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with a CalPERS retirement with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the second full month after retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting with the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental insurance premium or unreimbursed single retiree health insurance premium. For premiums paid in calendar year 2017, that will be reimbursed in 2018, the City will reimburse an amount of \$352 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$211, per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium or unreimbursed single retiree health insurance premium. The amount of the City reimbursement will be adjusted once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.

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Beginning in 2004, the City has funded this benefit by an amount to be determined by an actuary.

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Each retiree will be required to submit proof of medical coverage to the City each year. The City will pay the reimbursement in a lump sum payment quarterly.

22. PREMIUM PAY

- A. CRIME SCENE INVESTIGATOR (CSI) PREMIUM PAY
B. Effective the first full pay period following City Council approval of this MOU, any Unit 2 employee who is assigned as a Crime Scene Investigator or Field Evidence Technician shall receive an additional two and one-half percent (2.5%) of base special assignment premium while assigned. SPECIAL RESPONSE TEAM (SRT)

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A 5% salary differential will be paid to members of the SRT team only during the time the team is activated and combat ready. Premium pay will not apply during training. It shall be the responsibility of the Department timekeeper to mark the bi-weekly payroll sheets for the time spent in SRT duties to indicate the amount of time spent performing this particular type of duty.

C. MOTORCYCLE DUTY

- D. Any employee of the Police Department of the City of Santa Clara who is assigned to motorcycle duty shall be compensated at his/her regular salary plus an additional 5% for each day while on such assignment and while actually performing such duty. Such pay will be calculated on the same basis as other premium pay, e.g., SRT pay, etc. It shall be the responsibility of the Department timekeeper to mark the bi-weekly payroll sheets for the time spent in the motorcycle duty to indicate the amount of time spent performing this particular type of duty. FIELD TRAINING OFFICER (FTO)

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All classified employees of the Police Department who act in the capacity of Field Training Officer will be compensated a differential of 5% while assigned as a Field Training Officer. Such officers must successfully pass the Field Training Officer selection process as outlined by the City Police Department and as finally approved by the Chief of Police.

23. PEACE OFFICER STANDARDS AND TRAINING (POST) CERTIFICATE

Effective retroactive to December 18, 2016, employees that have achieved Intermediate POST certification shall receive 2.5% of base pay for this certification. Effective retroactive to December 18, 2016, employees that have achieved Advanced POST certification shall receive an additional 2.5% (for a total of 5.0%) of base pay for this certification. To be eligible, and receive payment, employees must either provide proof from POST of the Intermediate or Advanced POST certificate or get written confirmation and approval from both the Training Sergeant and Police Chief (or designee) that the requirements for certification have been successfully completed. POST Certificate Pay shall be included on the Salary Adjustment Form as a mandatory allocation.

Deleted: E. NARCOTICS TASK FORCE AND SPECIALIZED CRIMES ACTION TEAM ¶ (SCAT)¶

¶ All employees in the classification of Police Officer who are assigned to the Narcotics Task Force will be compensated an additional 5% salary differential for all time spent in such assignments. The 5% salary differential for time spent assigned to the Narcotics Task Force shall be compensated in the same manner as Motorcycle Officers and SRT. It shall be the responsibility of the Department timekeeper to mark the bi-weekly payroll sheets for the time spent in the Narcotics Task Force or SCAT to indicate the amount of time spent performing this particular type of duty.¶
"Narcotics Task Force" is synonymous with successor narcotics assignments in which the officer is assigned to work singly or with a group composed of single agency personnel or with multi-agency personnel, so long as the assignment is full-time narcotics investigation.¶

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24. ON-CALL PAY

The City will credit two (2) hours of overtime compensation per week for “on call” pay for the following listed investigator assignments for weeks when investigators in those assignments are assigned to be on call:

- Property Crimes Detective Sergeant
- Burglary Detective
- Auto Theft/SET Detective
- Financial Crimes Sergeant
- Identity Theft/Arson Investigator Detective
- Robbery/Homicide Sergeant
- Robbery/290 Detective
- Sex Crimes/Elder Abuse Sergeant
- Juvenile Sex Crime Detectives
- Assaults/General Person Crimes Sergeant
- Domestic Violence Detective

Effective the first full pay period following City Council approval of this MOU, the City will also credit two (2) hours of overtime compensation per week for “on call” pay for the following assignments for weeks when assigned to be on call”

- Traffic Officer (2)
- Traffic Sergeant
- Traffic Investigator
- CSI Officer (2)
- CSI Sergeant

25. PUBLIC INFORMATION OFFICER/EXPLORER COORDINATOR PAY

A. Public Information Officer: Effective the first full pay period following Council approval of this MOU, the individual assigned on an on-going basis as the Department's Public Information Officer shall receive a pay amount equal to an additional hour of overtime compensation each pay period in recognition of the additional time spent outside his/her regularly scheduled hours performing Public Information Officer work for the City. This pay is inclusive of any FLSA or overtime obligation that might apply and represents the parties' good faith estimate of the amount of additional time outside the employee's regular schedule that is required.

B. Explorer Coordinator: Effective the first full pay period following Council approval of this MOU, the City shall provide a total of ten hours of compensatory time off per month to Explorer Coordinators (i.e. either 10 hours to one Explorer Coordinator, or 5 hours each to two Explorer Coordinators or 3.33 hours each to three Explorer Coordinators), which amount represents a good faith estimate of the average total amount of time spent per month performing Explorer Coordinator duties outside his/her/their regular work hours. This amount is intended to fully

Deleted: The City will provide the Traffic Investigator \$1,500 per year in recognition of the on-call requirements of this classification. This pay shall only apply if the individual is in fact in a pay status during the pay period in question. If and when a second Traffic Investigator is hired, the City and POA will meet and confer regarding the extent to which the total amount of money agreed to for this on-going on-call status (\$1,500 per year) shall remain the same or be adjusted. If the parties cannot agree, the \$1,500 amount will be shared equally by the two Traffic Investigators sharing the on-call duties.¶

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compensate the applicable employee(s) for this work, inclusive of any FLSA or other overtime obligation.

26. ARMORER COMPENSATION

The represented employee who is assigned the added duty of Armorer will be paid \$300 per year as extra compensation for on-duty time related to the assignment. Payment will be made on a quarterly basis in January, April, July and October in advance as other pay, subject to taxes and retirement.

Deleted: ~~<#>field evidence technician pay.~~
Officers assigned as Field Evidence Technicians will be entitled to a premium pay of ten percent (10%) for actual hours worked performing those duties, except that a one hour minimum will apply for the first hour while performing those duties.

27. BILINGUAL PAY

Employees shall be entitled to receive, in addition to their regular compensation, the additional payment outlined below for bilingual skills if they meet the following criteria:

- Certification from the City, by oral examination, that the employee possesses the needed language skills.
- Certification by the Chief of Police that a particular assignment involves need for the required skills on a regular basis.
- Certifications required and obtained above will not necessarily follow an employee if transferred or promoted.

Bilingual pay shall be forty-five dollars (\$45.00) per bi-weekly pay period.

In addition, employees that can demonstrate a higher level of bilingual proficiency by satisfying a more rigorous job connected oral and written testing process required by the Police Department than required for the standard bilingual pay described above shall receive an additional \$45 per bi-weekly pay period, i.e. a total of \$90 per bi-weekly pay period.

28. RECRUITMENT INCENTIVE

If a represented employee recruits and is responsible for a police officer, sergeant, or lieutenant joining the Santa Clara Police Department, the represented employee shall receive compensatory time off as follows:

- 10 hours of compensatory time off when the employee is hired
- 10 hours of compensatory time off after the employee successfully completes the Field Training Program (becomes a solo beat officer)
- 10 hours of compensatory time off at the time the employee successfully completes probation (18 months)

To be eligible, an applicant must identify the represented employee at the time of application as being responsible for the applicant seeking employment with the Santa Clara Police Department. The Professional Standards Unit Sergeants and any other employees directly involved in the hiring process are not eligible for compensatory time off under this section.

29. TEMPORARILY WORKING IN A HIGHER CLASSIFICATION

Represented employees may be assigned to work temporarily in a higher classification than his/her own by the Department Head or designee. The assignment must be in writing and the employee must assume the duties of the higher classification. Classifications in this unit shall be paid at least 5% more than their prevailing salary or at the entrance step of the range of the higher classification to which the incumbent may be temporarily assigned by the Department Head or designee to work out of classification, whichever compensation pattern is greater. To qualify, the time worked shall be no less than four (4) hours during the work day. After qualification, the employee will be compensated for Out of Classification from the first hour of the assignment.

Employees may be assigned to work outside of the specific classifications, and without regard to any working out of class special compensation, in any Civil Defense situation where an actual state of emergency has been officially declared to be in effect within the City or County.

30. UNIFORMITY OF SALARY STEPS

The salary schedule will be developed as follows:

- A. There will be a five percent differential in the hourly rate between salary steps 1, 2, 3, 4, 5, and 7. Salary step 6 will be the mid-point between salary steps 5 and 7.
- B. Salary step 1 for the position of Police Sergeant will be the same hourly rate as salary step 4 for Police Officer (approximately 15.7% difference). Salary step 1 for Police Lieutenant will be the same as salary step 4 for Police Sergeant (approximately 15.8% difference).
- C. The hourly rate of pay will be an exact amount rounded to three decimal places. The bi-weekly rate of pay will be an exact amount that is 80 times the hourly rate of pay rounded to two decimal places. The monthly salary will be an approximate amount derived from multiplying the hourly rate by 2080, dividing by 12 and rounding to the nearest whole number.
- D. The salary schedule will be developed based upon the current monthly rate for Police Officer at salary step 5, increased by the percentage which is derived from application of the negotiated Total Compensation increase. Future salary adjustments will be derived from application of the percentage salary increase that is derived from the negotiated Total Compensation increase applied across the salary schedule.

31. STEP INCREASE EFFECTIVE DATE

The practice of awarding step increases is as follows:

- A. Employees who have an anniversary date that falls within the first week of the pay period and who have been approved for a step increase will be adjusted

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on the beginning day of the pay period during which the anniversary date falls.

- B. Employees who have an anniversary date that falls within the second week of the pay period and who have been approved for a step increase will be adjusted on the beginning day of the pay period immediately following the anniversary date.

32. TRAVEL COMPENSATION FOR TRAINING

Employees who are authorized to travel to or from a training event site that is outside Santa Clara will be compensated as follows for such travel:

- A. Authorized and required travel on a regularly scheduled work day, outside scheduled work hours, will be compensated at the appropriate overtime rate for actual time spent traveling to the training site.
- B. Authorized and required travel on a regularly scheduled day off will be compensated at the appropriate overtime rate for actual time spent traveling to the training site or the regularly scheduled number of hours of the employee's regular work day, whichever is less. For example, an employee who regularly works a 10 hour shift Monday through Thursday would be compensated for up to ten hours for travel that took place on Sunday, but would not be compensated for any travel that was more than ten (10) hours.

Officers will be required to adjust their normally scheduled work hours as necessary and practical to avoid the payment of overtime whenever possible.

Travel time for training that is required by the Department, required to maintain POST Certification, or required to perform a special assignment or collateral duty, and which takes place outside regular work hours will be eligible for compensation.

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33. TRAVEL COMPENSATION WHILE ON EXTRADITION ASSIGNMENT

Employees who are required to travel for prisoner extradition outside Santa Clara, or who voluntarily accept such assignment, will be compensated as follows for such travel:

- A. Authorized travel on a regularly scheduled work day, outside scheduled work hours, will be compensated at the appropriate overtime rate for actual time spent traveling to and from the extradition site.
- B. Authorized travel on a regularly scheduled day off will be compensated at the appropriate overtime rate for actual time spent traveling to and from the extradition site.
- C. The Division Commander and/or the immediate supervisor may adjust the normal work schedule for the employee in order to minimize the overtime impact of the assignment with a minimum 14 hours' notice.

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Employees performing work directly related to the extradition of the prisoner will be compensated at the appropriate rate while performing such work.

34. PER DIEM

Represented employees will receive the City allowed per diem while attending on-duty training.

35. CANINE CARE

A. Represented employees serving as Canine handlers are entitled to up to 3 ½ hours per week of paid time off for the care of the assigned canine. Time off shall not be charged to any other leave balance.

B. In the event a canine is killed in the line of duty, the City shall provide for burial arrangements that meet with the City's approval.

36. CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CalPERS)
For employees that do not meet the definition of "New Members" under the Public Employees' Pension Reform Act of 2013 ("PEPRA"), the City shall maintain its Safety contract with CalPERS providing the "3% @ 50" retirement formula and additional benefit options, including but not limited to single highest year compensation period.

Deleted: COMPREHENSIVE MEMORANDUM OF UNDERSTANDING

Deleted: The City, in conjunction with the Association, shall establish a comprehensive Memorandum of Understanding (MOU) that will include the provisions of all prior MOU's. Once established, the comprehensive MOU will be updated, amended and added to during each negotiation process.¶

For employees that meet the definition of "New Members" under the Public Employees' Pension Reform Act of 2013 ("PEPRA"), the City shall maintain its Safety contract with CalPERS to provide the "2.7% @ 57" retirement formula and additional benefit options, including but not limited to the three (3) highest years compensation period.

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37. HEALTH INSURANCE

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A. Prior to June 21, 2015,

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The Health/Dental insurance refund/deduction schedule will be based upon 12 payments per year. Payments will be refunded/deducted during the first paycheck issued in each month. Refunds are paid when the total allocation from total compensation for health and dental insurance is greater than the monthly premium cost for health and dental insurance for the employee. Deductions are taken when the total allocation from total compensation for health and dental insurance is less than the monthly premium costs for health and dental insurance for the employee.

Deleted: Effective the first full month following Council approval of this MOU, the City will pay toward health premiums for those employees enrolled in a City health plan an amount equal to \$200 more than the Kaiser employee only rate. Employees that show proof of health that sign an ACA compliant attestation confirming coverage by a family member in a group health insurance plan shall have the option to instead receive a flat dollar taxable cash-in-lieu benefit of \$835.66. Employees covered by a City health plan whose premium amount is less than \$835.66 shall receive a flat dollar taxable payment of the difference between their applicable premium amount and \$835.66

B. On and After June 21, 2015,

1) Mandatory Health Allocation

Effective June 21, 2015, Kaiser single employee health insurance plus \$100/month will be included in the Salary Adjustment Form as a Mandatory Allocation. The amount allocated will be the Kaiser single employee health

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insurance premium plus \$100/month minus the monthly statutorily required Public Employees Medical and Hospital Care Act ("PEMHCA") contribution. The PEMHCA contribution will remain in the Salary Adjustment Form as a separate Mandatory Allocation. The City will change the dollar amount designated within the Salary Adjustment Form for Kaiser single employee health insurance when the premium amount changes annually and/or when the statutorily required PEMHCA contribution changes. Under State law, the monthly PEMHCA contribution will be adjusted annually by the CalPERS Board of Administration to reflect any change in the medical care component of the Consumer Price Index.

Deleted: the first full month following Council approval of this MOU, the City will pay employees toward the cost of dental premiums an amount equal to the lowest cost employee only premium amount among the dental plans offered by the City. All employees are required to enroll in a dental plan

2) Discretionary Health Allocation [THIS PARAGRAPH IS SUSPENDED FOR THE TERM OF THIS MOU]

The Association may (on a once-a-year basis, commencing with the beginning of the calendar year) designate within the discretionary portion of the Salary Adjustment Form a fixed monthly sum to be paid by the City for all represented employees toward health insurance premiums. If the health insurance premium for the individual employee exceeds the amount allocated, the balance is paid by way of a salary deduction from the pay of the individual employee. As an exception to the once-a-year usual rule set forth in this paragraph, the Association may also designate changes in its discretionary allocation(s) on the Salary Adjustment Form to be effective June 21, 2015.

3) Cash Back or In Lieu

Effective June 21, 2015, for employees that choose not to enroll in a City health plan, the medical cash in lieu amount shall be the lesser of either (a) \$1,207.17 or (b) the sum of the mandatory health allocation, PEMHCA minimum and discretionary health allocation, plus discretionary dental allocation. However, should the City's mandatory allocation at some future time exceed \$1,207.17, employees that choose not to enroll in a City health plan shall be entitled to a medical cash in lieu amount equal to that City mandatory allocation. The maximum cash in lieu amount described in this paragraph shall also apply to the right of employees enrolled in a City health plan to cash back payments if the cost of their health and dental premiums is less than the maximum cash in lieu amount described in this paragraph.

C. HEALTH FLEX CONTRIBUTION

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Effective January 1, 2018, the City will offer employees a Health Flex Contribution of \$133.00/month to put toward the payment of a City offered health plan. The \$133.00/month applies for 2018, and this amount shall be modified each calendar year using the Rate of Pay Safe Harbor (based on the lowest base pay of any full-time employee covered by this MOU) to ensure the City's offered coverage is "affordable."

Employees who enroll in a City health plan for which the premium amount is more than \$835.66/month shall receive an Additional Health Flex Contribution. The Additional Health Flex Contribution, when added to the

Deleted: the first full month following Council approval of this MOU, the City will pay toward vision insurance premiums an amount equal to the lowest cost employee only vision premium. Participation is voluntary. Employees that choose not to enroll in a vision plan do not receive the benefit of this paragraph, i.e. City contributions toward vision premiums

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Health Flex Contribution described in the prior paragraph and the Regular Flex Contribution described herein, shall equal \$200 per month over the Kaiser employee only premium amount for the applicable year. (For 2018, this is an additional \$146.77/month to these individuals, since \$200 over the Kaiser employee only amount in 2018 is \$982.43/month.)

Employees may not receive all or any portion of the health Flex Contribution or Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the health Flex Contribution. It is understood and agreed that a portion of the Health Flex Contribution described in this subsection is the City's contribution of the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) (e.g. \$133 in 2018), which is the City's designated PEMHCA amount.

D. REGULAR FLEX CONTRIBUTION

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Effective January 1, 2018, the City will provide a Regular Flex Contribution equal to \$835.66/month less the Health Flex Contribution (thus, for 2018, the Regular Flex Contribution will be \$702.66/month). Employees may use the Regular Flex Contribution to pay for health benefits offered under the City's Section 125 plan or may opt to receive any or all of the Regular Flex Contribution as taxable cash. An employee will receive a Regular Flex Contribution whether or not he/she enrolls in City-offered health benefits and notwithstanding the provisions of Section 37.E. below.

For employees who enroll in City health and whose benefits exceed the total of the City's health Flex and Regular Flex Contributions to them, the balance of the health premium shall be paid by a salary deduction from the pay of the individual employee.

E. CASH IN LIEU

Deleted: The City and POA agree there shall be a re-opener in March 2017 limited to the subject of the City's cafeteria plan, including medical dental and vision benefits, and cash take home as an element of a cafeteria/medical program. The parties will negotiate in good faith on these issues. Any agreement by the parties resulting from this re-opener shall be reflected in an amendment to this MOU. If the parties cannot agree, applicable impasse procedures shall apply including, if necessary, imposition of terms and conditions covered by the re-opener by the City.

Effective January 1, 2018, employees who choose not to enroll in a City health plan, and meet the requirements set forth below shall receive a Cash in Lieu amount equal to \$835.66/month minus the Regular Flex Contribution (for 2018, the Cash in Lieu amount thus is \$133/month).

In order to receive Cash in Lieu of health coverage, an employee must sign a form attesting that the employee and the employee's Tax Family have the Alternative Required Coverage for the Opt Out Period.

- Tax Family means all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies.
- Alternative Required Coverage required means minimum essential coverage through another source (other than coverage in the

individual market, whether or not obtained through Covered California).

- Opt Out Period means the plan year to which the opt out arrangement applies.

An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year for each plan year the employee would like to receive cash in lieu.

The Cash in Lieu payment cannot be made and the city will not in fact make payment if the City knows or has reason to know that the employee or a Tax Family member does not have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

An employee who opts out of City-offered health benefits, but cannot provide the attestation, will not receive the cash in Lieu contribution described in this subsection.

F. FLEXIBLE SPENDING ACCOUNT (IRS SECTION 125 PLAN)

The City has established a Flexible Spending Account benefit (IRS Section 125 Plan) for employees, which provides accounts in which employees may contribute pre-tax dollars for dependent care and un reimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Service. Detailed information will be available in the Summary Plan Document.

This plan is voluntary and participating employees will make pre-tax salary reduction elections to fund the plan.

38. DENTAL INSURANCE

The City will pay toward dental insurance premiums an amount equal to the lowest cost employee only premium amount among the dental plans offered by the City. All employees are required to enroll in a dental plan.

39. VISION INSURANCE

For persons enrolled in the City's VSP vision plan, the City will pay toward vision insurance premiums an amount equal to the lowest cost employee only vision premium. Participation is voluntary. Employees that do not choose to enroll in a vision plan are not entitled to the benefit of City contributions to vision premiums described in this paragraph.

40. DEFERRED COMPENSATION

Effective beginning the first full pay period following City Council approval of this MOU, the City shall contribute \$150 per month to the City's Section 457 deferred

[compensation plan on behalf of each represented employee.](#)

41. ASSIGNMENT BID SYSTEM

The City agrees to a seniority bid system for all Patrol Officers, approved jointly by the Association and the City

42. 10 PLAN

- A. All represented employees are assigned to a 10-hour, four (4) day workweek.
- B. The exact hours of assignment will be as defined in a program that has been developed jointly by the City and the Association.
- C. Any alternative schedule may be proposed, adopted, and/or discontinued in accordance with Section 47 of this MOU.

43. LIMITED/ALTERNATIVE DUTY

Upon a written release to return to work from an employee's doctor, subject to review by a City doctor, the City may require an employee who has been off work due to illness, injury or other health condition to return to work within the physician's specified medical restrictions. The release must be in writing.

Nothing in this section is intended to imply that an employee has a right to a limited/alternative duty assignment. All such assignments are temporary assignments and are subject to the City's periodic review of the employee's continued need for limited or alternative duty and the Department's ability to continue the employee in the assignment.

In placing an employee in a light/alternative duty assignment, if requested by the employee, the Department will consider whether an appropriate, beneficial and available light/alternative duty work assignment exists on the employee's usual shift. If no such assignment is available and/or would not benefit the Department, the Department retains the right to place the employee in a light/alternative duty work assignment on a different shift. The Department also reserves the right to change an employee's light/alternative duty assignment to a different shift after the light/alternative duty assignment has begun if doing so would better promote and serve Department interests. Employees shall be provided two weeks advanced notice if they are to be placed in a light/alternate duty assignment with a different shift than their usual shift.

An employee returning to a light/alternative duty work assignment from an industrial injury or illness leave shall receive the employee's usual shift differential even if the employee is assigned to a light/alternative duty assignment that would not otherwise entitle the employee to a shift differential. An employee returning to a light/alternative duty work assignment from a non-industrial injury or illness shall not receive the shift differential applicable to the employee's regular work schedule unless the light/alternative duty assignment work schedule to which the employee is assigned would entitle the employee to a shift differential.

It is the City's intent with regard to light/alternative duty assignments to have sworn personnel perform law enforcement related duties to the maximum extent possible, recognizing though that the specific duties of a light/alternative assignment will need to take into account the employee's medical restrictions and the needs of the Department.

An employee who has a job related illness or injury which required the employee to be off work under Workers' Compensation, and who does not qualify for limited or alternative duty, will be reassigned to an 8-hour, day, Monday through Friday, work schedule for the purpose of keeping required medical appointments and, subject to the employee being medically able to do so, to honor all scheduled court appearances while so incapacitated.

In the event the Americans with Disabilities Act requires modification of the provisions of this section, it is agreed that the law will prevail.

44. EMERGENCY PAID LEAVE POOL

A. ADMINISTRATION

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board) consisting of one (1) member of the Association, the Chief of Police (or designee) and the Director of Human Resources (or designee). Determination of eligibility to use the emergency paid leave established in this Emergency Paid Leave Pool (Pool) will be by majority vote of this board. An adverse decision of this board may be appealed to the POA Board of Directors and their determination shall be final.

B. METHOD OF DONATION

- 1) Contribution of vacation or CTO to the Pool will be computed at the member's base hourly rate of pay (excluding premium or specialty pay).
- 2) Contribution may be made from earned vacation, CTO or cash only. Conversion of Sick Leave to Vacation for purposes of donation to the Pool will be immediately credited to the Pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave, computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.
- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the Pool when the employee's vacation accrual has reached the maximum allowed.

- 5) Funds contributed to the Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- 6) Nothing herein shall preclude a donation of leave or funds to a member of Unit 2 from employees in other bargaining groups, nor preclude such a donation by employees in Unit 2 to employees in other bargaining groups.

C. USE OF POOL

- 1) Employee must have a verified emergency need for time off to request emergency paid leave from the Pool. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. An employee's initial request to use leave for a medical emergency shall be made to the City's Director of Human Resources (or designee). The Director of Human Resources (or designee) shall make an initial determination regarding whether the employee's request to use Emergency Paid Leave is for a verified medical emergency. The Director of Human Resources (or designee) shall notify the rest of the Board of the name of the individual making the request, the date of the request and whether or not the individual's request qualified as a verified medical emergency need under this section.
- 2) Employee must have exhausted appropriate paid leave (sick leave, vacation or CTO) prior to becoming eligible to request emergency paid leave from the Pool.
- 3) The maximum time available from the Pool (subject to the assets of the Pool) will be 320 hours (four [4] pay periods) for emergency paid leave benefits due to the illness or injury of the employee or the maximum hours allowable for accrual of vacation for emergency needs of the family of the employee.
- 4) Emergency paid leave dollars will be deducted from the Pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay) times hours deducted from the Pool.
- 5) Emergency paid leave hours will be made available for use in the pay period following approval by the Association.
- 6) Use of emergency paid leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.

- 7) Emergency paid leave that has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the Pool. Vacation, sick leave and other benefits that have accrued to the employee will remain in the employee's account.

45. ACCRUAL OF SICK LEAVE WHILE ON LABOR CODE 4850 BENEFITS

Employees who have sufficient paid time in a pay period, including time under Section 4850 of the State of California Labor Code, will be credited for sick leave accrual during that pay period.

46. INDEMNIFICATION FOR ACCIDENTAL OFF-DUTY DISCHARGE OF FIREARMS

The City shall indemnify represented employees from any liability claims and costs for personal injury or property damage caused by the accidental discharge of his/her authorized firearm while off-duty provided that:

- A. The firearm that was discharged was authorized by the Santa Clara Police Department for use as the regular duty weapon (or as a second weapon) or is the property of the City of Santa Clara and is under the custody, care and control of the employee at the time the firearm was discharged ["firearm"]; and
- B. The employee was not engaged in an unlawful act at the time the firearm was discharged; or
- C. The employee was not legally under the influence of alcohol or illegal drugs at the time the firearm was discharged; or
- D. Although off-duty from the Santa Clara Police Department, the employee was acting in the capacity of a police officer as provided by the State of California at the time the firearm was discharged.

For purposes of the interpretation of this section, "accidental discharge" of the firearm when off-duty (while permitted by law to carry such firearm) is further defined as:

- A. The unintentional discharge of the firearm while the employee is carrying it on their person in an appropriate manner; or
- B. The firearm is being transported from one location to another; or
- C. The firearm is being cleaned; or
- D. The firearm is being shown to another person where the sole purpose of such use is for display.

47. LAY-OFF POLICY

The need for reduction in force shall be determined by the City Manager as a

result of the resource allocation plan adopted by City Council. The determination to reduce the work force shall contain reasons for reduction and a listing of programs which are affected, and the specific City classifications and numbers within each classification which shall be reduced.

In the event the City demonstrates it is necessary to reduce the work force of represented employees, the City agrees to meet-and-consult with the Association at least thirty (30) days prior to any layoff notifications to receive recommendations as to how best to accomplish this process with the least impact on represented employees, and to explore alternatives such as reductions in work hours, freezing of step or merit pay increases or similar programs which will result in reducing the City's labor costs.

If the City implements a reduction in work force, the City will administer the lay-off policy consistent with the following concepts:

A. ORDER: The order of lay-off shall be as follows:

- 1) Temporary (as-needed) employees in the classification identified for reduction
- 2) Probationary employees in the classification identified for reduction
- 3) Permanent employees in the classification identified for reduction in inverse order of seniority based on hire date within the Police Department as described in Section B, entitled "SENIORITY".

B. SENIORITY: Seniority shall be determined by the length of current continuous, permanent service within the Police Department regardless of classification in which employed. Continuous service shall be defined as that which has not been interrupted by separation of service from the Police Department. Seniority shall be retained, but shall not accrue, during any period of authorized leave without pay (more than 5 days), except for military leave.

C. NOTICE: When the City determines that it must implement a reduction in work force, notice to the employee shall be in writing at least thirty (30) days prior to the effective date of the lay-off. The Association shall also receive concurrent notification of lay-off. The notice of lay-off shall contain the following:

- 1) Reason for lay-off
- 2) Effective date of lay-off
- 3) Opportunity to discuss lay-off with a representative of management
- 4) Conditions governing re-employment
- 5) Information regarding Unemployment insurance

D. REASSIGNMENT (BUMPING): Employees identified for lay-off shall have reassignment rights (bumping) to the same classification in a different department or division or to a previously held classification in which the employee attained permanent status based upon seniority with the City of

Santa Clara. Employees must exercise these rights by notifying Human Resources, in writing, within seven (7) calendar days after receiving written notification of the lay-off.

An employee who is reassigned to a lower classification as a result of a reduction in force and who was qualified to apply for a promotional examination for a position in the Police Department before being reassigned into the lower classification shall continue to be eligible to apply for a promotional examination for that higher position as long as he/she continues to meet the education and experience requirements for that higher classification.

In the event of lay-off, any employee so affected may elect to:

- A. Accept a position in a lateral or lower class in which he/she has permanent status, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- B. Accept a position in higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's transfer from the higher class was voluntary and occurred during his/her current period of employment and provided he/she is otherwise qualified and is more senior than the least senior employee in such higher class.
- C. Accept a vacant position in a lateral or lower class for which he/she is otherwise qualified.
- D. Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on lay-off in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on lay-off, such employee will only be recalled to the classification from which the employee elected to be placed on lay-off. The decision to not accept assignment to a lower classification may adversely affect the employee's ability to collect unemployment insurance.

RE-EMPLOYMENT/REINSTATEMENT LISTS

The names of regular or probationary employees laid-off according to this policy will be placed on a Re-employment List for each classification for which the employee is eligible in the inverse order of the lay-off. Individuals' names will be retained on a Re-employment List for classified positions for the shorter of either two (2) years from the effective date of lay-off or the date on which a laid off employee rejects an offer of re-employment in the classification from which the former employee was laid off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

In the event an employee accepts reinstatement to a lower class than the one from which laid off, such person's name shall remain on the Re-employment List

for reinstatement to the class from which laid off, lateral classes or other higher classes upon which his/her name appears provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent lay-off. Laid off persons who are re-employed under this provision shall be re-instated with the same seniority, including leave accrual rates, as at the time they were laid off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

48. REDUCED WORK WEEK/REDUCED PAY AND VOLUNTARY TIME OFF (VTO)

Employee participation in this plan is contingent upon the City's understanding and agreement that employee participation cannot be interpreted as anything other than a temporary and limited good faith effort being made by the employee to do his/her part to help ease the current budget crisis. This is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

A. REDUCED WORK WEEK/REDUCED PAY

Employees may request a reduced work week schedule (32 hours per week instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.
- 2) More than a 20% reduction of the work week in a pay period will result in proportionate reduction of accrual of sick leave and vacation.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Impact on retirement and other benefits will be determined by the application of actual work hours and rates of pay required under each of those programs.
- 5) Overtime hours will be paid at the straight time rate for hours worked which are less than the employee's regular daily work schedule or 40 hours per week. Overtime hours worked in excess of the employee's regular daily work schedule or more than 40 hours per week will be at the appropriate overtime rate.

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- 6) Cancellation of the employee's participation in the program will be by mutual agreement of the employee and the Department Head, with the approval of the City Manager.

B. VOLUNTARY TIME OFF

Employees may request voluntary unpaid time off under the following conditions:

- 1) Approval of a work schedule that does not adversely impact the operations of the department or other employees in the work unit with the approval of the Department Head and the City Manager.
- 2) No impact on either sick leave or vacation accrual if sufficient hours are worked in a pay period to entitle the employee to his/her regular accrual rate for either benefit.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Voluntary time off may be taken without the employee first using all of his/her accrued Compensatory Time Off (CTO).
- 5) Employee may cancel his/her participation in the program with a notice time agreed upon at the time of the granting of the request which will be sufficient to allow the department head to accommodate the request.
- 6) Cancellation of the employee's participation in the program will be at the discretion of the Department Head with the approval of the City Manager.

49. REPRESENTATION OF RECRUIT POLICE OFFICER

The Association is the representative organization for the classification of Recruit Police Officer. Employees assigned to this non-sworn classification will be entitled to the benefits assigned to the sworn classifications represented by the Association, except that they will be miscellaneous members of the Public Employees Retirement System (CalPERS) and be covered by Social Security and they will not be accorded the protection afforded sworn employees in the Peace Officers Bill of Rights.

50. ASSOCIATION DUES AND NEW EMPLOYEE ORIENTATIONS

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A. DUES DEDUCTION

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All employees within the bargaining unit represented by the Association may voluntarily join the Association and pay dues, initiation fees, and general assessments, as well as payment of any other membership benefit program

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sponsored by the organization (hereinafter "payroll deductions") as determined by the Association. It shall be the responsibility of the Association to maintain a record of employees who have given their written consent to join and pay dues to the Association. The Association shall certify to the City the identity of such members and the amount of such payroll deductions to be deducted.

The City agrees to deduct the periodic payroll deductions from the paycheck of each employee who voluntarily executes a valid authorization form as certified by the Association, or pursuant to an authorization form tendered to the City by either the Association or the employee. All sums deducted by the City shall be remitted to the Association in an expedient manner and at the intervals requested by the Association (i.e., no more than seven (7) calendar days after the deduction), together with a list of names of each employee for whom a deduction was made.

If an employee member in the bargaining unit desires to revoke, cancel or change prior dues deduction authorization, the City shall direct the employee member to the Association. Any such dues deduction revocation, cancellation and/or change shall only be effective when submitted by the Association directly to the City and is subject to the terms and conditions as set forth in the original payroll deduction/authorization.

Notification will be provided to the City's Payroll Division. Any change, cancellation or deduction request received by the City prior to the 15th of the month will be processed the first full pay period of the following month. Change, cancellation and deduction requests received by the City on or after the 15th of the month will be processed the second full pay period of the following month.

The Association shall indemnify and hold the City and its agents and employees harmless from any cost, expense, fee or liability resulting from any claims, demands, lawsuits, or any other action arising from the operation of this Section. The City shall promptly provide the Association with notice of any such claim, demand, lawsuit, or any other similar action arising from the operation of this Section.

B. NEW EMPLOYEE ORIENTATION

The City shall provide the Association with reasonable advance notice of the start date of any new hire to a represented classification. The City shall provide the Association with an exclusive 30 minute meeting with any new employee or group of employees covered by this MOU, during the employee(s)'s first week of employment). The specific date, time, and location of the 30 minute Association meeting with new employees will be coordinated by the Chief of Police and the President of the Association.

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51. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents and domestic partners, subject to the requirements of each benefit provider.

52. ALTERNATE WORK SCHEDULE

During the term of this agreement, the POA may propose an alternate work schedule. Such proposal must be made in accordance with City Manager Directive #71 and submitted to the Chief of Police. Consideration will be given as to the feasibility of such proposal pursuant to the evaluation criteria contained in CMD #71. Management retains the sole right to determine scheduling needs. A proposal for alternate work schedule, and the establishment or discontinuance of an alternate work schedule is not subject to any grievance procedure.

If the City discontinues an alternate work schedule that has been adopted pursuant to this section and City Manager Directive #71, the represented employees so assigned will return to the regular work schedule that was in place prior to the implementation of the schedule that is being discontinued.

53. FLEXIBLE SPENDING PLAN, INTERNAL REVENUE CODE SECTION 125

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pre-tax (federal, state, FICA, Medicare) dollars for dependent care and qualified unreimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

54. WORK ACTIONS

The Association recognizes and agrees that it does not have the right to strike. The Association, including its members and representatives, will not engage in, authorize, sanction, or support any work slowdown, stoppage of work, curtailment of production, "sick-out," or "blue flu action" for the purpose of influencing management decisions or labor negotiations.

55. PAY PERIODS

Allowances/payments or accrual rates that are an agreed upon amount per month or year but are paid for administrative purposes in incremental amounts each pay period, shall be the same total amount per year in years in which there are 27 instead of 26 pay periods. This clarification is not intended to and would not modify anyone's salary/pay rate.

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56. NEXT MEMORANDUM OF UNDERSTANDING PROPOSALS

The Association and the City will commence negotiations on a successor MOU for the term commencing at the expiration of this MOU no later than three months prior to the expiration of this MOU.

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57. EMPLOYEE RIGHTS

All rights, privileges and working conditions enjoyed by the classifications represented herein, as defined in Personnel and Salary Resolution No. 09-7650, dated July 14, 2009, and City of Santa Clara Resolution No. 2979, entitled "Employer-Employee Relations" dated December, 1972, and other City resolutions, if any, dealing with employee rights and benefits shall not be reduced during the terms of this MOU except in accordance with the provisions of this MOU.

For the duration of this MOU, except as provided herein, the wage, fringe benefits, and other terms and conditions of employment, whether written or unwritten provided members of the Police Officers Association shall not be reduced or otherwise altered except by mutual agreement between the Management of the City of Santa Clara and representatives of the Police Officers Association.

58. MANAGEMENT RIGHTS

Subject to State law and the provisions of City of Santa Clara Employer-Employee Relations Resolution, the rights of the City through its Council and Management include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause, establish reasonable employee performance standards including, but not limited to, quality and quantity standards; and to require compliance therewith; take all necessary actions to carry out its mission

in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The City Council on its own behalf and on behalf of the City hereby retains and reserves unto itself all rights, power, authority, duty, responsibility and obligations confirmed on and vested in it by the laws and Constitution of the State of California and the United States of America. The exercise of such rights, power, authority, duty, responsibility and obligations by the City Council and the adoption of such rules, regulations, policies as are necessary and as they apply to employees represented by the Santa Clara Police Officers Association, shall be in accord with this MOU to the extent that they do not violate any of the reserved duties, responsibilities and obligations confirmed on and vested in it by the laws, Charter of the City, Constitutions of the State of California, and the United States of America.

59. SCOPE OF THIS MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the meetings which preceded this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. Therefore, for the life of this MOU, the City and the Association voluntarily and unqualifiedly waive the rights and each agrees that the other shall not be obligated to meet and confer with respect to any subject or matter not referred to or covered in this MOU, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they met and signed this MOU.

Notwithstanding the foregoing, however, in the event any portion of this MOU is declared null and void by superseding Federal, State or City law, the balance of this MOU shall continue in full force and effect, and the parties shall immediately commence the meet and confer process to ensure that the superseded portions shall be rewritten to conform as nearly as possible to the original intent.

The City further reserves the right to consider required organizational and operational changes in the economical and efficient operation of the Department whenever existing or future statutes bring about additional monetary costs.

Nothing in the foregoing shall prevent the parties to this agreement from meeting-and-conferring during the term of this MOU in matters of mutual concern. Such meeting-and-conferring shall be established and continued by mutual consent only. If, after meeting and conferring between the management representatives and the majority employee representatives, no agreement has been reached; such items under discussion shall remain unchanged.