

City of San Jose

And

**Association of Building, Mechanical and Electrical
Inspectors
(ABMEI)**

Memorandum of Agreement

On April 29, 2011, the City of San Jose and ABMEI reached an agreement for Fiscal Year 2011-2012, which was approved by City Council on May 31, 2011.

As of February 14, 2012, ABMEI has not approved the Memorandum of Agreement.

Memorandum of Agreement

City of San José

and

Association of
Building, Mechanical and Electrical Inspectors
(ABMEI)



~~December 11, 2007~~ July 1, 2011 through
~~December 10, 2009~~ June 30, 2013

**Association of Building, Mechanical and Electrical Inspectors
Memorandum of Agreement**

~~December 11, 2007~~July 1, 2011 through ~~December 10, 2009~~June 30, 2013

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EXHIBITS:

~~EXHIBIT I — Salaries effective December 16, 2007 and December 14, 2008~~

~~EXHIBIT II — Training Side Letter Agreement~~

~~EXHIBIT III — Dispatcher Assignment Side Letter Agreement~~

ATTACHMENT:

~~ATTACHMENT I — Disciplinary Appeals Side Letter~~

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, this ~~11th~~30th day of ~~December~~June ~~2007~~2011 by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the Association of Building, Mechanical and Electrical Inspectors, hereinafter referred to as the "Employee Organization" or "Organization."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective July 1, 2011, except where otherwise provided, and shall remain in effect through June 30, 2013. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

This contract expires on June 30, 2013. It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

~~This Agreement shall become effective December 11, 2007 except where otherwise provided, and shall remain in effect through the 10th day of December 2009. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.~~

~~It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the parties will exchange initial written proposals no later than the first day of August immediately prior to the expiration of this agreement.~~

~~The parties shall then set the first meeting of the meet and confer process at their mutual convenience as soon thereafter as possible. At this first meeting the parties may establish a final date for submission of additional proposals.~~

ARTICLE 2 RECOGNITION

Pursuant to Resolution #39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Association of Building, Mechanical and Electrical Inspectors, hereinafter referred to as the Employee Organization, is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions there from shall constitute an appropriate unit.

ARTICLE 3 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein, to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the Association of Building, Mechanical and Electrical Inspectors.

ARTICLE 4 DEFINITIONS

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

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Salary Ranges

Effective ~~December 16, 2007~~ June 27, 2010, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be ~~increased~~ decreased by approximately ~~3.00~~ 4.65%.

5.1.1

Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be decreased approximately by an additional 5.45%. This will result in the top and bottom of the range of all classifications represented by ABMEI (Union Code 03/031) being an additional 5.45% lower. All employees will receive an additional 5.45% base pay reduction.

~~5.1.1 Effective February 15, 2008, full time employees who were employed in ABMEI represented positions on October 19, 2007, employed in ABMEI represented positions on December 11, 2007, and were still employed by the City January 13, 2008, shall receive a one time payment of \$600.~~

~~5.1.2 Effective December 14, 2008, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be increased by approximately 3.75%.~~

~~5.1.3~~ 5.1.2 Pursuant to the provisions of Resolution No. 51870 or subsequent amendments thereto, no employee in any classification listed in this Unit shall receive the next higher salary rate within their range unless the Department Director or designee wherein such employee is employed, files with

the Director of Human Resources before the normal effective date of such increase a written statement that such employee's work merits an increase in salary. The parties understand and agree that the general state of the budget of the City and/or the Department will not be a factor in determining whether or not an employee's work merits an increase in salary.

~~5.1.43 Effective June 27, 2010, all ABMEI represented employees will have step and merit increases frozen for 26 pay periods. After 26 pay periods, employees represented by ABMEI will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible. (NOTE: FROM 2010 IMPLEMENTATION)~~

5.1.34 Prior to the normal effective date of an employee's salary rate increase, the Department Director or designee must file a statement with the Director of Human Resources that such employee's performance merits an increase in salary rate or a statement that the performance does not merit an increase and the reasons therefore.

~~5.1.45~~ If an employee fails to receive authorization for a salary rate increase through error or inadvertence, the Director of Human Resources or designee shall authorize an increase retroactively to the normal effective date upon notification from Department Director or designee that the failure to file a written statement authorizing a salary increase was due to error or inadvertence, together with a statement that the employee's work merits a salary rate increase.

~~5.1.56~~ If an employee fails to receive authorization for a salary rate increase, the Director of Human Resources or designee shall mail to the employee notice of the withholding of such salary rate increase, together with a copy of the statement that the employee's performance does not merit an increase. The notice shall be mailed to the address of the employee on file with the Director of Human Resources or designee within ten (10) calendar days after the normal effective date of the salary rate increase.

~~5.1.67~~ Within twenty (20) calendar days after an employee receives notification that a salary rate increase will be withheld, such employee may file a written Notice of Appeal to the Director of Human Resources, together with a written statement showing cause, if any, why an increase in salary in accordance with the above provisions should not be withheld. Within fifteen (15) calendar days after receiving the appeal, the Director of Human Resources or designee shall determine whether or not said employee's work merits a raise in salary. If the Director of Human Resources or designee finds such employee's work does merit an increase in salary, such employee shall receive an increase as provided for herein above, retroactive to the date upon which such increase would normally take place under the provisions above.

~~5.1.7 Effective June 26, 2011, the salary steps for all classifications represented by ABMEI will change from approximately 5% between each step to approximately 2.5%. This will result in an increase in the number of steps in the pay range.~~

5.2 Working in a Higher Classification

- 5.2.1 Upon specific assignment by the Department Director, or designee, an employee may be required to perform the duties of a higher classification. Such assignments may be made to existing authorized positions, which are not actively occupied due to the temporary absence of the regularly appointed employee. Assignments to vacant positions shall be made in accordance with the rules pertaining to Temporary or Provisional appointments, or in accordance with section 5.2.2 below.
- 5.2.2 As an alternative to making an appointment to a vacant position, a department, may, upon City Manager or designee approval, assign an employee to work in a higher classification for a period of time not to exceed six months. At the expiration of the assignment (not to exceed six months), the assigned employee shall return to their regular assignment. The department may then request authorization to fill the position or return it to vacant status.
- 5.2.3 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher classification, which is at least one salary rate step higher in the salary range schedule than the rate received by the employee in the employee's present class. The employee shall not receive any compensation, however, unless the assignment is for two (2) consecutive workdays or longer. The employee shall be compensated at the appropriate rate commencing with the first workday of the assignment provided the assignment is made for the applicable length of time.

5.3 Health Insurance

- 5.3.1 The City will provide health coverage for eligible full-time employees and their dependents in accordance with one of the available plans.

An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree. ~~The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage, up to a maximum of one hundred dollars (\$100) per month. If the employee's 10% contribution for the lowest priced plan exceeds one hundred dollars (\$100) per month, the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~Effective at the beginning of pay period one (1) of payroll calendar year 2008, the City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

5.3.2 Effective June 27, 2010, †The City will pay eighty-five percent (85%) of the full premium of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan for employee or for employee and dependent coverage, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

~~5.3.3 Effective January 1, 2008, †Co-pays for all available HMO plans shall be as follows:~~

- ~~a. Office Visit Co-pay shall be increased to \$10.~~
- ~~b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)~~
- ~~c. Emergency Room Co-pay shall be increased to \$50.~~

5.3.34 Effective July 1, 2010, †Co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25.
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
- c. Emergency Room Co-pay shall be increased to \$100.
- d. Inpatient/Outpatient Procedure Co-pay shall be increased to \$100.

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5.4 Dental Insurance

5.4.1 The City will provide dental coverage for eligible full-time employees and their dependents. As of the date of this Agreement, the plans include an indemnity plan and a DHMO plan. These programs are described in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department.

~~Effective at the beginning of pay period one (1) of payroll calendar year 2006, †The City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the~~

lowest priced plan, the City will pay ninety five percent (95%) of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost for the selected plan. As of the date of this Agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department.

An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

5.4.2 Each eligible, full-time employee and dependents shall receive annual maximum coverage of \$1,500.00 in the Delta Dental Plan.

5.4.3 Each eligible, full-time employee and dependents shall receive a lifetime maximum of \$2,000.00 Orthodontia coverage in the Delta Dental Plan.

5.4.4 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending Sections 3.24, Part 24, and 3.28 Part 17, Title 3 of the San Jose Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.

5.4.5 If the retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by the other available option(s).

5.5 Payment-in-Lieu of Health and Dental Insurance

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

~~5.5.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward their health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.~~

5.5.23 Effective June 27, 2010, employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

| | <u>Health-in-Lieu</u> | <u>Dental-in-Lieu</u> |
|---|-----------------------|-----------------------|
| <u>If eligible for family coverage:</u> | <u>\$221.84</u> | <u>\$19.95</u> |
| <u>If NOT eligible for family coverage:</u> | <u>\$89.09</u> | <u>\$19.95</u> |

5.5.34 A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

5.5.43 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.5.54

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

5.5.65 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

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

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

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

5.6 Call Back Pay

An employee who is called back to work after the employee has worked their scheduled shift and has departed from their place of employment shall be credited with overtime for the time worked, or for two (2) hours at the appropriate rate, whichever is greater.

5.7 Jury Duty

5.7.1 Each full-time employee who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America shall receive the regular base compensation less all jury fees received, excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:

5.7.2 Employees assigned to a day shift:

5.7.2.1 In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives their full day's pay, and shall pay to the City the amount they receive from the court for the jury duty, excluding mileage.

5.7.2.2 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.

5.7.2.3 In those cases in which the employee is not released by the court until after 1:00 p.m., the employee need not return to work. The employee receives the full day's pay, and shall pay to the City the amount they receive from the court for the jury duty, excluding mileage.

5.8 Witness Leave

5.8.1 Each employee of the City who is required, under subpoena to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive their regular salary during the time of their service as a witness under subpoena, less any and all witness fees which the employee may receive. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City.

5.8.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with their employment, shall be compensated at the appropriate rate for the time spent by him/her in court, or for two (2) hours, whichever is greater, less any and all witness fees which the employee may receive. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City.

5.8.3 Upon service of subpoena, an employee shall immediately advise their Department Director, designee or supervisor thereof, and of the time when the employee is required to appear in Court in response thereto.

5.9 Educational and Professional Incentives

5.9.1 Tuition Reimbursement as provided in Section 4.3.1 of the City Policy Manual of the City of San Jose shall be continued during the term of this Memorandum of Agreement. Continuing Education Units will also be accepted. The amount paid to any employee shall not exceed four hundred dollars (\$400) in any fiscal year and shall be reimbursed at 100%. In no event shall tuition received from this program plus reimbursement from other educational incentive programs exceed the total cost of tuition and books.

5.9.2 The Tuition Reimbursement program will reimburse one-hundred percent (100%) of the examination fee for certifications and/or the renewal fee for certifications employees in the certified and uncertified Combination Building Inspector class and certified and uncertified Supervising Building Inspector classes issued by the International Conference of Building Officials (ICBO), the International Association of Electrical Inspectors (IAEI) or the International Association of Plumbing and Mechanical Officials (IAPMO). Reimbursement of the examination fee will be made only upon submission of proof to the Director of Human Resources of successful completion of the examination issued by ICBO, IAEI, IAPMO or other recognized agencies.

5.10 Use of Private Automobile - Mileage Reimbursement

Each employee of the City authorized by the City Manager or designee to use the employee's private automobile in the performance of the employee's duties shall be entitled to receive and shall be paid as a travel allowance for such use of the employees private automobile a "mileage reimbursement rate" consistent with the City's rate, as specified in the City Policy Manual.

5.11 Life Insurance

The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.

5.12 Bilingual Pay

Each full time employee who meets the eligibility requirements set forth herein shall be compensated as described below for each pay period actually worked.

5.12.1 The employee is or was selectively certified for a position which has been approved by the Director of Human Resources or designee for selective certification based on bilingual ability and is currently assigned to such position, or

- 5.12.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of a non-English language on a regular basis.
- 5.12.3 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to discuss any proposed change with the organization.
- 5.12.4 Each employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of twenty-nine dollars (\$29) per biweekly pay period or for performing written and oral translation duties at the rate of forty dollars (\$40) per biweekly pay period for each pay period actually worked.
- 5.12.5 If an eligible employee is on a paid or unpaid leave of absence, for a period of one (1) full pay period or more, the appropriate reduction in bilingual pay shall be made.

5.13 Scheduled Off-Hours Inspections

An employee who is scheduled to perform one or more inspection(s) outside of, and not contiguous with, his/her regularly scheduled shift, shall be compensated for performing such inspection(s) at the rate of four (4) hours or for the time actually worked, to the nearest half-hour, whichever is greater. Such compensation shall be at the appropriate rate.

5.14 Protective Clothing and Equipment

- 5.14.1 The City shall furnish to each new full-time employee required safety shoes and coveralls within a reasonable time of employment. In addition, rain cover shall be available for use by employees required to work outside in inclement weather.
- 5.14.2 The City shall pay a cash protective clothing and equipment allowance to each eligible employee in the annual amount of \$175. Eligible employees will begin receiving the annual allowance in the calendar year following initial receipt of the protective clothing and equipment. The annual allowance will be paid as soon as practical after January 1 of each calendar year.
- 5.14.3 The employee shall be responsible for the continued upkeep, cleaning, maintenance and replacement of the initially issued protective clothing, equipment and related parts from the cash allowance.

ARTICLE 6 HOURS OF WORK AND OVERTIME

- 6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 6.3 The normal work schedule for full-time employees shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.
- 6.3.1 With the approval of the Department Director or designee, employees holding positions in classifications assigned to ABMEI (Union Code 03/031) Unit Three (3) may be scheduled for a thirty (30) minute or forty-five (45) minute lunch period in lieu of a one (1) hour lunch period where such schedule would not adversely affect the Department's or Section's hours of service to the public.
- 6.4 The City may establish a work schedule other than Monday through Friday where the interests of, or service to, the public requires. Employees assigned to such a schedule shall be given two (2) consecutive days off, even though the days off are in different work weeks except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 6.5 The Department Director or designee, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and work week for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.6 ~~Employees who work in excess of 40 hours per work week shall be compensated at the rate of time and one-half (1.5) the employee's hourly rate.~~
An employee authorized or required to work overtime who works in excess of ~~eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four (4) ten (10) hour work days, or in excess~~ of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her work week requirement.
- 6.6.1 Notwithstanding 6.6 above, any employee who works in excess of twelve consecutive hours shall be compensated at the rate of two (2) times the employee's hourly rate for all hours worked in excess of twelve (12) consecutive hours.
- 6.6.2 For overtime work, volunteers will be asked for first, whenever possible.
- 6.7 An employee assigned to work overtime may elect to either be paid for such overtime worked or be credited with compensatory time, providing that the employee makes such election during the pay period in which the overtime is worked, and provided, further, that in the event the employee requests payment for such overtime, the Department's budget can accommodate such payment. Once compensatory time off has been approved

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

6.7.1 Notwithstanding any other provision of Section 6.7 to the contrary, the Department Director or designee may announce the intent of the department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire department or to a specified section(s) of a department. The announcement will also specify a date by which each affected employee must elect to either:

6.7.1.1 be paid for all accrued, unused compensatory time, OR

6.7.1.2 be paid for all but 24-hours of such accrued, unused compensatory time, OR

6.7.1.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Section 6.7.

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

6.9 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time, shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the Executor of the Will or the Administrator of the Estate.

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

ARTICLE 7 DUES

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

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

ARTICLE 8 MANAGEMENT RIGHTS

- 8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or the City Charter including, but not limited to: The right to direct the work force increase, decrease or re-assign the work force hire, promote, demote discharge or discipline for cause transfer or reclassify employees provide merit increases assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.
- 8.2 The City has the sole and absolute right to determine the nature and type of, assign, re-assign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without

consultation or meeting and conferring with the employee affected or the Association of Building, Mechanical and Electrical Inspectors representing such employee.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

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

~~9.6 — 9.5 — Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Organization in writing once during the term of this 2007 — 2009 Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and~~

~~refusing to perform others), intermittent strikes and sit down strikes.~~Retirement Benefits Reopener:

~~9.6.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring within fifteen (15) calendar days of the City providing written notice to ABMEI on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees, and pension benefit/costs for future employees.~~

~~9.6.2 The parties intend to engage in the foregoing negotiations in a collation bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than fifteen (15) calendar days after the City provides written notice to ABMEI with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.~~

~~9.6.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare and pension benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit down strikes.~~

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

ARTICLE 10 CONCERTED ACTIVITY

It is understood and agreed that:

10.1 Participation by any employee in a Unit represented by the Organization in picketing with respect to any issue concerning matters within the scope of representation as provided or proposed to be provided by the City of San Jose for any person, or participation in a strike, work stoppage or slowdown, or the failure to perform lawfully

required work shall subject the employee to possible disciplinary action up to and including discharge.

- 10.2 If the Employee Organization, its officers or its authorized representatives violate provision (10.1) above or tolerate the violation of provision (10.1) above and after notice to responsible officers or business representatives of the Employee Organization, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision (10.1) above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Organization shall, by action of the Municipal Employee Relations Officer or designee, also be subject to suspension or revocation of the recognition granted to such Employee Organization and the Municipal Employee Relations Officer or designee may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Organization, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer or designee shall not be subject to review under the provisions of Article 12, entitled Grievance Procedure.

ARTICLE 11 SAFETY

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Association agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes that their work assignment is unsafe and for that reason refuses to perform such assignment shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate employee organization representative.
- 11.3 The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, he/she shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety

of the safeness or un-safeness of the work assignment shall not be subject to the grievance procedure.

- 11.4 Upon request of either the employee or the representative of the Department of Industrial Safety, the appropriate employee organization representatives shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate employee organization representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.
- 11.5 As used herein, the term "City Safety Officer" shall include any person designated to act as such.

ARTICLE 12 GRIEVANCE PROCEDURE

- 12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Employee Organization, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate employee organization representative may file a grievance on behalf of such employee(s).
- 12.2 Grievances involving Resolution #39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer or designee and shall be processed in accordance with applicable provisions of the Resolution.
- 12.3 STEP I
- 12.3.1 An employee may present the grievance orally either directly or through his/her Employee Organization representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.
- 12.3.2 If the employee is not satisfied with the reply of their immediate supervisor, the employee may appeal the grievance to Step II.
- 12.4 STEP II
- 12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Department

Director or designee, within five (5) working days following the receipt of the immediate supervisor's oral reply.

- 12.4.2 The written grievance shall contain a complete statement of the grievance, and alleged facts upon which the grievance is based, the reasons for the appeal, the section or sections of the Memorandum of Agreement relied upon or claimed to have been violated, and the remedy requested. The grievance shall be signed and dated by the employee.
- 12.4.3 The Department Director or designee may arrange a meeting with the employee, the appropriate employee organization representative and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director or designee shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.
- 12.4.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

12.5 STEP III

- 12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer or designee within five (5) working days following receipt of the written decision at Step II.
- 12.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall hold a meeting with the employee, the appropriate employee organization representative, and the Department Director or designee to discuss the matter. A written decision shall be given the employee or the appropriate employee organization representative within five (5) working days following the meeting.
- 12.5.3 If the employee is not satisfied with the decision of the Municipal Employee Relations Officer, the employee or the appropriate employee organization representative may appeal the grievance to Step IV.

12.6 STEP IV - ARBITRATION

- 12.6.1 If the grievance has been properly processed through the previous steps of the procedure and remains unresolved, the employee or the appropriate employee organization representative may appeal the grievance to arbitration. The employee or the appropriate employee organization representative shall notify the Municipal Employee Relations Officer or designee, in writing, within

fourteen (14) calendar days following receipt by the employee of the written answer at Step III.

- 12.6.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer or designee with the employee and/or the appropriate employee organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue or issues, each party will prepare its statement of the issue or issues and jointly submit the separate statement of issue or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue or issues are.
- 12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 12.6.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 12.6.5 The arbitrator shall hold a hearing on the issue or issues submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue or issues involved.
- 12.6.6 The decision shall be sent to the Municipal Employee Relations Officer or designee and to the employee or appropriate representative of the employee organization.
- 12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 12.6.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

12.7 General Provisions

- 12.7.1 Although the grievances may be processed during normally scheduled working hours, the employee organization agrees that the time spent by its designated representatives shall be kept to a minimum and that no employee organization representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The employee organization also agrees that it will not process grievances during periods of overtime.
- 12.7.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee or the appropriate employee organization representative may appeal the grievance to the next higher step within the time limits provided.
- 12.7.3 The employee organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 12.7.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee, or appropriate employee organization representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 12.7.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.
- 12.7.6 Any of the time limits specified in Steps I through III may be extended by written mutual agreement of the parties.

ARTICLE 13 LEAVES OF ABSENCE

- 13.1 By written request of the employee through the "Request for Leave of Absence" form, the appointing authority, or his/her designated representative, may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may be extended, not to exceed an additional 6 months, by written request of the employee subject to approval of the City Manager or designee. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled

work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered a voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to the position within the classification held by the employee at the time the leave commenced.

- 13.3 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.
- 13.4 The employee is responsible for coordinating their return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact their supervisor to ensure that all necessary documents have been completed and steps taken.
- 13.5 For the purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14, entitled Layoff.
- 13.6 Any employee who is absent without notification to their Department Director or designee for two (2) consecutive work shifts shall be considered a voluntary resignation unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 13.7 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined by the City to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 14 LAYOFF

- 14.1 Order of Layoff. When one or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
 - 14.1.1 Provisional employees in the order to be determined by the appointing authority.
 - 14.1.2 Probationary employees in the order to be determined by the appointing authority.
 - 14.1.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.
 - 14.1.3.1 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

- 14.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.
- 14.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:
- 14.3.1 Accept a position in a lateral or lower class in which he/she has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 14.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Director of Human Resources or designee. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director of Human Resources regarding necessary education, experience, and training shall be subject to the grievance procedure, including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
- 14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 14.4 As used in this Article, the following words and phrases shall be defined as follows:
- 14.4.1 Except as otherwise provided in part 14.3 above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
- 14.4.2 A lower class shall mean a class with a lower salary range.
- 14.4.3 A position in a lateral class shall mean a position in a class with the same salary range.

- 14.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 14.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 14.6 Layoff Reinstatement Eligible List
- 14.6.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Part 14.3 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 14.6.2 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.6.3 Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have their name removed from the Reinstatement Eligible List.
- 14.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three year period specified herein may request that their name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director of Human Resources, be returned to the Reinstatement Eligible List.
- 14.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 15 BULLETIN BOARDS

- 15.1 Recognized employee organizations may use designated portions of City bulletin boards in departments, which have employees in the representation unit for which the employee organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of employee organization notices and announcements listed below may be posted on the bulletin boards:
 - 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the employee organization and the Municipal Employee Relations Officer or designee.
- 15.3 All material shall identify the organization responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee who shall have the sole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer or designee shall notify the employee organization of any material ordered removed. The employee organization shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 15.6 Failure of the employee organization to abide by the provisions of this Article shall result in the forfeiture of the employee organization's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

- 16.1 Except as hereinafter otherwise provided, each full-time employee shall be entitled to paid holiday leave on each of the following holidays as observed, and on no other day, during the term of this Agreement:

| | |
|------------------------|------------------------|
| New Years Day | Columbus Day |
| Martin Luther King Day | Veterans Day |
| President’s Day | Thanksgiving Day |
| Memorial Day | Day After Thanksgiving |
| Independence Day | Christmas Eve Day |
| Labor Day | Christmas Day |
| Cesar Chavez Day | New Year’s Eve Day |

- 16.2 Eligible full-time employees shall also be entitled to paid holiday leave on any other day proclaimed or designated by the Council of the City of San Jose as a holiday for which full-time employees will be entitled to holiday leave. Should additional holidays be provided or should an existing holiday be traded for a different holiday observance for

other represented employees on a Citywide basis, such additional holidays or trades shall apply to employees in this unit.

- 16.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the preceding Friday.
- 16.4 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays provided, however, that subject to regulation and control by the City Manager, the director or designee of any department of the City government may specify the days of the week and the hours of such days when any such employee in their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary that he would be entitled to for that day at the employee's regular rate of pay, and in addition thereto, the employee shall receive compensatory time off duty equal to one and one-half (1-1/2) times the number of hours which the employee works on said holiday.
- 16.4.1 Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.7 of this Agreement provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to the employee's regular pay for such holiday and in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.
- 16.4.2 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition thereto.
- 16.5 If any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during their assigned work day. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.7 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

16.6 The parties recognize that the construction industry does not necessarily observe the same holidays as the City and that it may therefore be desirable to have employees work on days normally designated as holidays for the City. Thus, notwithstanding any provision of this Article to the contrary, if an employee and the Department Director or designee mutually agree in advance of any holiday that it is desirable for purposes of workload management to permit said employee to work on a day designated as a holiday in section 16.1 of this Article, the employee may work and be paid at their regular rate of pay. Furthermore, in lieu of any holiday premiums provided elsewhere in this Article for work on such holiday the employee shall schedule a different, regularly scheduled work day to be on leave with full pay at the employee's regular rate of pay, provided that such scheduling shall be done in advance of said regularly scheduled work day and shall be subject to the approval of the Department Director or designee.

16.7 Holiday Closure. The City Manager or designee may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year's holidays. Department Directors or designees will determine which services will remain open. In the event of a holiday closure and with approval of the Department Director or designee, employees may take time off during the closure period, but taking time off shall not be a requirement.

16.7.1 Employees electing to take time off during a holiday closure may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees who take lost time during the closure shall continue to receive the following accruals: vacation, sick leave, citywide seniority and department seniority. Eligible employees who have been employed by the City for less than thirteen (13) bi-weekly pay periods may use available vacation during the closure.

ARTICLE 17 VACATION AND PERSONAL LEAVE

17.1 Vacation Accrual Rates. Each eligible full-time employee, who has been employed as such for at least thirteen (13) bi-weekly pay periods, shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or amendments thereto. An employee shall be entitled to accrue vacation leave in the amount specified below for each cycle of 26 full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of their employment as specified below:

| Years of Service | Hours of Vacation per 26 Pay Period Cycle |
|-------------------------|--|
| First 5 years | 80 hours |
| 6th year – 10th year | 120 hours |
| 11th year – 12th year | 136 hours |
| 13th year – 14th year | 152 hours |
| 15th year or more | 168 hours |

- 17.2 Carry-Over of Vacation Leave. An employee may carry over to the next subsequent cycle of 26 biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. An employee carrying-over greater than the maximum allowable vacation hours shall have the excess amount deducted from the following year's accrual unless approved in advance by Employee Relations. This carryover process shall expire at the end of the 2007 payroll calendar year.

Effective the first pay period of payroll calendar year 2008, employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.

Effective the first pay period of payroll calendar year 2008, an employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

- 17.3 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease and if the employee has taken more vacation leave than the employee had accrued at the time of termination of their employment, there shall be deducted from the employee's final pay, or the employee shall refund to the City such pay as the employee shall have received for vacation leave theretofore taken by the employee.

17.3.1 The provisions of Subsection 17.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of their death, or their entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.

- 17.4 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, at the time of such termination, full pay for any vacation leave which the employee may then have accrued.

- 17.5 Vacation Pay. If, in the judgment of the City Manager or designee, it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, the City Manager or designee may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to their regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, the employee may file an election in writing with the Office of Employee Relations to carry over such leave to the subsequent cycle of 26 biweekly pay periods.

- 17.6 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is

reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless the employee elects or consents to commence such leave at another and different time.

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

17.6.1.1 The work unit may determine the method for scheduling vacations, subject to departmental approval. Changes to an established department vacation scheduling policy are subject to ten (10) calendar days advance notice to the Union, in order to discuss the proposed changes or request to Meet-and-Confer, if applicable.

17.6.1.2 In the absence of an established department vacation scheduling policy, preference of vacation leave timing shall be given in order of seniority, except that pre-approved vacation shall be honored, subject to operational requirements. For purposes of this section, seniority shall be determined first by length of time served in the department, and, then, by time served in the City.

17.7 Computation of Vacation Leave

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

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

17.8 Personal Leave. Each full time employee shall be entitled to a maximum of sixteen (16) hours of Personal Leave per payroll calendar year. Effective the first pay period of payroll calendar year 2008, each full-time employee shall be entitled to a total of twenty-four (24) hours per payroll calendar year. Such leave may be scheduled in one-half hour increments at any time, subject to approval of the supervisor. Personal Leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years.

17.8.1 Employees hired on or after July 1 of each payroll calendar year, shall be entitled to only eight (8) hours of personal leave in the first payroll calendar year of employment. Effective the first pay period of payroll calendar year

2008, fulltime employees hired on or after July 1 of each payroll calendar year shall be entitled to only twelve (12) hours in the payroll calendar year in which they were hired.

ARTICLE 18 SICK LEAVE

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

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

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non job related illness or injury; routine medical or dental appointments, or for the care related to the illness or injury of the employee's child, mother, father, spouse or domestic partner registered with the Department of Human Resources. In addition, accrued sick leave may be utilized by an eligible female employee due to illness, injury, or disability related to pregnancy or child-birth.

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

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

~~18.1.3.1 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick leave shall be utilized in one half (1/2) hour increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of 85% of such employee's regular base pay.~~

~~18.1.3.2 If an employee is required to be absent from work on account of job-related illness or injury and no benefit is provided pursuant to Article 19 Disability Leave, the employee may utilize accrued sick leave.~~

- 18.1.4 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.
- 18.1.5 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he, or someone on his or her behalf, notifies the employee's immediate superior, Department Director, Director of Human Resources or designee, of the employee's intent to take such sick leave, and of the reasons therefore, prior to or within one (1) hour after the commencement of the sick leave provided, however, that the City Manager or designee may waive the requirement of such notice upon presentation of a reasonable excuse of such employee.
- 18.1.6 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
- 18.1.7 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. No single period of sick leave without pay shall exceed twelve (12) consecutive months, or eighteen (18) cumulative months in any period of twenty-four (24) consecutive months. Any employee who is unable to return to work at the expiration of either of these periods of time shall be separated from City service.
- 18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:
- 18.2.1 Federated Retirement Plan:
- The employee is:
- 18.2.1.1 A member of the Federated Retirement Plan, and
- 18.2.1.2 Retired under the provisions cited in the plan, and
- 18.2.1.3 Credited with at least fifteen (15) years of service in this retirement plan, or
- 18.2.1.4 Credited with at least ten (10) years of service prior to a disability retirement.
- 18.2.2 Terminated Employee with Vesting Rights

The employee has:

- 18.2.2.1 Terminated service with the City, and
- 18.2.2.2 Retained vesting rights in a retirement system according to provisions in the SJMC, and
- 18.2.2.3 Following such termination, qualifies for retirement and retires under the provisions cited in the code and
- 18.2.2.4 Has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.2.3 Death During Service

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

18.2.4 Death of Terminated Employee

The estate of any full-time employee who:

- 18.2.4.1 Had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the SJMC, and
- 18.2.4.2 Dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and
- 18.2.4.3 Has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.3 Payout shall be determined as follows:

- 18.3.1 If an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death [in accordance with 18.3.1.1](#).

[18.3.1.1](#) [Less than 400 hours:](#) [Hours accumulated x 50% of final hourly rate](#)

[400 – 799 hours:](#) [Hours accumulated x 60% of final hourly rate](#)

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

18.3.1.2 Distribution of payouts to eligible employees, in accordance with 18.3.1 above, who retire before June 27, 2010, shall be made no later than February 1, 2011.

18.3.2 ~~Less than 400 hours: Hours accumulated x 50% of final hourly rate~~Effective June 27, 2010, if an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death in accordance with 18.3.2.1.

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

400 – 1200 hours: Hours accumulated x 60% of final hourly rate

18.3.3 Employees hired by the City on or after June 28, 2010, if an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused sick leave as of the date of the employee's retirement or death in accordance with 18.3.3.1.

18.3.2.1 0 – 750 hours: Hours accumulated x 25% of final hourly rate

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

~~800 – 1200 hours: Hours accumulated x 75% of final hourly rate~~

18.4 Employees are only eligible for one (1) sick leave payout while employed by the City of San Jose, including breaks in employment.

18.5 Use of previously accumulated sick leave hours:

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

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary. Effective June 24, 2012, employees shall no longer be eligible to receive DLS.

19.2 Eligibility for Disability Leave Supplement A full-time employee who is required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division I or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in Section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Workers' Compensation Section. In no event may DLS exceed the limit specified in Section 19.6.

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

19.4 Ineligible Causes for Disability Leave An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:

- An act of gross negligence of such employee
- Any work voluntarily undertaken by employee from which he/she has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

~~An employee shall be voluntarily separated from City service if the City offers the employee temporary modified duty at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified (NOTE: LANGUAGE FROM IMPLEMENTATION IN 2010 BUT NOT INCLUDED IN 2011 TA; PLEASE ADVISE)~~

19.5 Ineligibility if Offer and Decline of Modified Duty DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he/she is physically qualified.

19.6 Maximum Term of Disability Leave Supplement The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which he/she is disabled for one of the following time periods, whichever is shortest:

- The time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period.
- The period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
- Six (6) calendar months (1040 hours if not continually absent) following the date of injury.

Effective June 26, 2011, an employee will be eligible to receive DLS for a maximum of three (3) months (or 520 hours if not continually absent) for any current or future work-related injury or illness. Any employee who has exceeded three (3) months (or 520 hours if not continually absent) as of June 26, 2011, will no longer be eligible to receive DLS.

19.7 Time Limit for DLS Eligibility Effective June 26, 2011, after 520 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which he/she is claiming DLS.

19.8 Disability Leave Supplement is in Lieu of Regular Compensation Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.

19.9 Requirement of Evidence Proving Temporary Disability The Director of Human Resources is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director. The Director may require the employee to submit to a medical examination by a physician selected by the City.

19.10 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of accrued vacation and of Sick Leave as provided in Article 18 and with Workers' Compensation may be separated from City service.

19.11 Integration After the maximum time limit specified in Article 19.6, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.

- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

~~19.1 Disability Leave. Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.~~

~~19.2 Eligibility for Disability Leave Supplement. A full time employee required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division I or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.~~

~~19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Workers' Compensation Section. In no event may DLS exceed the limit specified in 19.6.~~

~~19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one year.~~

~~19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from an act of gross negligence of such employee and/or any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.~~

~~19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.~~

~~19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:~~

- ~~1. The time the employee is medically required to be absent due to a work-related injury or illness, after the required 3-day waiting period.~~

~~2. The period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.~~

~~3. Nine (9) calendar months (274 days or 1560 hours if not continually absent) following the date of injury.~~

~~19.6.1 Time Limit for DLS Eligibility. After 1560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS 5 years after the date of the onset of the injury or illness for which the employee is claiming DLS.~~

~~19.7 Disability Leave Supplement is in Lieu of Regular Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.~~

~~19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources, or designee, is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director, or designee. The Director, or designee, may require the employee to submit to a medical examination by a physician selected by the City.~~

~~19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.3.1, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service.~~

~~19.9.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave.~~

ARTICLE 20 MAINTENANCE OF MEMBERSHIP

20.1 Except as otherwise provided herein, each employee who, on ~~December 11, 2007~~July 1, 2011, is a member in good standing of the Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Organization as a condition of retaining membership.

20.2 Any employee who, on ~~December 11, 2007~~July 1, 2011, is not a member of the Organization nor any person who becomes an employee after ~~December 11, 2007~~July 1, 2011, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.

- 20.3 Any employee who, on ~~December 11, 2007~~July 1, 2011, was a member of the Organization, and any employee who subsequently becomes a member may, during the period ~~November 10, 2009~~June 1, 2013 to ~~December 10, 2009~~June 30, 2013, resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the City's Municipal Employee Relations Officer or designee with a copy to the Organization.
- 20.4 The Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

ARTICLE 21 AUTHORIZED REPRESENTATIVES

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

ARTICLE 22 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligation on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 23 BEREAVEMENT LEAVE

- 23.1 Each full time employee shall be granted bereavement leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an eligible person. Under extreme circumstances, the fourteen (14) day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.

- a) Parents/Step-parents
- b) Spouse

- c) Child/Step-child
- d) Brother/Sister/Step-brother/Step-sister/Half-brother and Half-sister
- e) Grandparents/Step-grandparents
- f) Great grandparents/Step-great grandparents
- g) Grandchildren
- h) Sister-in-law/Brother-in-law/Daughter-in-law/Son-in-law

23.1.1 A domestic partner, as referenced in Section 10.5, must be the domestic partner registered with the Department of Human Resources.

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

ARTICLE 24 RETIREMENT

24.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

24.1.1 Disability retirement benefit amounts will be offset by Workers' Compensation payments, except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.

24.1.2 Administrative costs of the Federated Retirement System are to be paid from the retirement fund.

ARTICLE 25 RETIREE HEALTHCARE FUNDING

25.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to

use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

25.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method),, each to be effective on the first pay period of the City's fiscal year in each succeeding year. -the first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

25.4 The City will establish a qualified trust ("Trust"). Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

25.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE ~~25-26~~ PROBATIONARY PERIODS

~~2526.1~~ Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to 80 hours of other cumulative or consecutive paid or unpaid absences.

~~2526.2~~ The City may at its discretion extend up to a maximum of three (3) months, the probationary period of an employee appointed to a supervising position in this unit. The employee will be notified in writing of the length and reason of the extension.

ARTICLE ~~26-27~~ DISCIPLINARY ACTION

~~26.226~~27.1 The City of San Jose discipline policy is described in City Policy Manual, Section 2.1.3. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, demotion and dismissal.

~~26.227~~2.2 Step Reduction: In addition to other formal disciplinary actions, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

~~26.327~~3 No_{m2} provision of this Article shall be subject to the grievance procedure of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City Policy Manual, Section 2.1.3 and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE ~~27-28~~ PERFORMANCE EVALUATION

~~2728~~.1 The purpose of performance evaluations is to have formal communication between supervisor and employee regarding job performance.

~~2728~~.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.

~~2728~~.2.1 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.

~~2728~~.3 If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made to the Department Director or designee. If the employee is dissatisfied with the decision of the Department Director or designee, the employee may request a hearing with the City Manager or designated representative. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.

~~2728~~.3.1 The City Manager or designated representative shall hold a hearing within a reasonable time, and within ten days of the hearing shall inform the employee of the decision. The decision of the City Manager shall be final. This will be the only appeal process applicable to review performance appraisal. The employee shall have the right to union representation at the hearing with the Department Director and/or the City Manager or designee.

ARTICLE ~~28-29~~ EMPLOYEE ASSISTANCE REFERRAL

~~2829~~.1 Performance problems are sometimes related to personal or work-related problems, which may be improved through the Employee Assistance Program (EAP). Therefore, if a supervisor believes that an employee's work performance is impaired and can be improved through the EAP, a supervisor, with department director approval, may require the employee to attend an initial screening session with the Employee Assistance Program.

~~2829~~.2 The employee shall receive paid release time to attend the initial appointment and must provide proof of attendance. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions, unless the employee voluntarily signs a release of information form. The employee's decision to attend or not attend follow-up sessions shall be voluntary. Follow-up sessions shall be on the employee's own time.

~~2829~~.3 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

ARTICLE ~~29-30~~ TIME DONATION PROGRAMS

Employees may donate time to eligible employees as outlined in the Time Donation Programs Section in the City Policy Manual.

~~Human Resources~~~~Human Resources~~~~Human Resources~~

ARTICLE 31 CONTINUED PROFESSIONAL TRAINING

The Department of Planning, Building, and Code Enforcement shall endeavor to provide up to twenty-four (24) hours of training per fiscal year, as is relevant to each ABMEI member employed by the City. Such training shall be scheduled at the discretion of the Director of Planning, Building, and Code Enforcement and employees shall be compensated at the appropriate rate for attendance at the training.

ABMEI shall make recommendations regarding training needs and advise the Department Director and the training committee of specific training opportunities.

ARTICLE ~~30-32~~ SUBSTANCE ABUSE

~~31.1~~

ARTICLE 33 PUBLIC TRANSIT SUBSIDY **ECO-Pass**

~~After calendar year 2011, the City will no longer provide employees an ECO Pass. This means that any employee in possession of a 2011 ECO Pass provided by the City may continue its use through calendar year 2011. Beginning calendar year 2012, the City will cease providing an ECO Pass.~~

Commuter Check Program

~~Upon exhaustion of the current supply of Commuter Check Vouchers, the Vouchers will no longer be available to employees for purchase from the City. This means that the subsidized Commuter Check Voucher Program is eliminated after the current supply of Commuter Check Vouchers are exhausted.~~

ARTICLE 31 CONTINUED PROFESSIONAL TRAINING

~~The Department of Planning, Building, and Code Enforcement shall endeavor to provide up to twenty-four (24) hours of training per fiscal year, as is relevant to each ABMEI member employed by the City. Such training shall be scheduled at the discretion of the Director of Planning, Building, and Code Enforcement and employees shall be compensated at the appropriate rate for attendance at the training.~~

~~ABMEI shall make recommendations regarding training needs and advise the Department Director and the training committee of specific training opportunities.~~

THIS AGREEMENT executed on the ~~30th 11th~~-day of ~~December~~June, ~~2007~~2011, between the City of San Jose and The Association of Building, Mechanical and Electrical Inspectors (ABMEI), IN WITNESS THEREOF, the appropriate representatives of the parties have affixed their signature thereto.

This Memorandum of Agreement was approved by the City Council of the City of San Jose on ~~January~~May 31, 2011, ~~2008~~ and ratified by the Association of Building, Mechanical and Electrical Inspectors on ~~December~~May 11, 2011, ~~2007~~.

For The City of San Jose:

For The Association of Building,
Mechanical and Electrical Inspectors
(ABMEI):

Debra Figone
City Manager

Tom Brim
ABMEI President

Gina Donnelly, Lead
~~Employee Relations Manager~~Deputy Director of Employee Relations

Steve Stender, Lead

ABMEI

~~Alex Gurza~~Allison Suggs, Team Member
~~Director of Employee Relations~~Senior Executive Analyst

Mike Terwilliger, Team Member

ABMEI

Joe Horwedel, Team Member
Member
Director of Planning, Building, and Code
Enforcement

~~Patrick Skillsky~~Richard Hicks, Team
Member
ABMEI

~~Allison Suggs, Team Member~~
~~Executive Analyst~~

~~Dan Rodriguez, Team Member~~
~~ABMEI~~

Exhibit_[m3] I

ABMEI SALARY RANGES

ABMEI Salaries Effective ~~December 16, 2007~~ June 26, 2011

| Job Code | Classification | Steps | 1st Step Hrly Rate | Top Step Hrly Rate | 1st Step Biweekly | Top Step Biweekly |
|-----------------|---|--------------|--------------------------------------|----------------------------------|--|--|
| 3915 | Building Inspector/ Combo Certified | <u>95</u> | \$ 38.30 <u>35.82</u> | \$ 46.54 <u>43.53</u> | \$ 3,064.00 <u>2,865.60</u> | \$ 3,723.20 <u>3,482.40</u> |
| 3916 | Building Inspector/ Combo Certified (PT) | <u>59</u> | \$ <u>35.82</u> 38.30 | \$ <u>43.53</u> 46.54 | n/a <u>\$2,865.60</u> | <u>\$3,482.40</u> n/a |
| 3917 | Building Inspector/ Combo | <u>95</u> | \$ 37.21 <u>34.80</u> | \$ 45.24 <u>42.32</u> | \$ 2,976.80 <u>784.00</u> | \$ 3,619.20 <u>385.60</u> |
| 3918 | Building Inspector/ Combo (PT) | <u>95</u> | \$ 37.21 <u>4.80</u> | \$ 45.24 <u>2.32</u> | <u>\$2,784.00</u> n/a | <u>\$3,385.60</u> n/a |
| 3912 | Building Inspector, Supervisor Certified | <u>95</u> | \$ 42.86 <u>0.09</u> | \$ 52.11 <u>48.74</u> | \$ 3,428.80 <u>207.20</u> | \$ 4,168.80 <u>3,899.20</u> |
| 3919 | Building Inspector, Supervisor | <u>95</u> | \$ 41.63 <u>38.94</u> | \$ 50.62 <u>47.35</u> | \$ 3,330.40 <u>115.20</u> | \$ 4,049.60 <u>3,788.00</u> |

ABMEI Salaries Effective ~~December 14, 2008~~

| Job Code | Classification | Steps | 1st Step Hrly Rate | Top Step Hrly Rate | 1st Step Biweekly | Top Step Biweekly |
|-----------------|---|--------------|--------------------------------------|---------------------------|-------------------------------------|--------------------------|
| 3915 | Building Inspector/ Combo Certified | 5 | \$39.74 | \$48.29 | \$3,179.20 | \$3,863.20 |
| 3916 | Building Inspector/ Combo Certified (PT) | 5 | \$39.74 | \$48.29 | n/a | n/a |
| 3917 | Building Inspector/ Combo | 5 | \$38.61 | \$46.94 | \$3,088.80 | \$3,755.20 |
| 3918 | Building Inspector/ Combo (PT) | 5 | \$38.61 | \$46.94 | n/a | n/a |
| 3912 | Building Inspector, Supervisor Certified | 5 | \$44.47 | \$54.06 | \$3,557.60 | \$4,324.80 |
| 3919 | Building Inspector, Supervisor | 5 | \$43.19 | \$52.52 | \$3,455.20 | \$4,201.60 |

ABMEI MOA ~~December 11, 2007 – December 10, 2009~~ July 1, 2011 – June 30, 2013

Exhibit II

Side Letter Agreement

TRAINING

Purpose

~~The City and ABMEI recognize the importance of continuing education and the diverse technical training needs of members of the Association of Building, Mechanical and Electrical Inspectors. Therefore, the City shall endeavor to provide employees forty (40) hours of training per fiscal year.~~

~~ABMEI shall make recommendations regarding training needs and advise department management and the training committee of specific training opportunities.~~

~~Employees shall be compensated as specified below for attendance at training.~~

Hours, Attendance and Compensation

~~1. Employees shall be provided a minimum of twenty-four (24) hours of technical training per fiscal year, as is relevant to each inspector. Such training shall be scheduled during non-regular work time and compensation for participation in such training shall be as follows:~~

~~1.1 The first sixteen (16) hours shall be compensated with pay at the appropriate rate.~~

~~1.2 The following eight (8) hours shall be compensated with either pay or compensatory time at the appropriate rate. The department shall determine which method of compensation will be utilized based on the department's ability to pay.~~

~~1.3 Attendance at training scheduled during the employee's regularly scheduled time off is voluntary. Employees who do not attend the training sessions shall not receive compensation.~~

~~2. Sixteen (16) hours of training may be scheduled at the discretion of the City either during the employee's normal schedule or during regularly scheduled time off.~~

Trainers

~~If current ABMEI members are selected to conduct training, they shall be allowed a reasonable amount of release time to prepare training material for each class. If release time is not feasible, a reasonable amount of overtime shall be paid for class preparation.~~