

**Association of Engineers and Architects,  
International Federation of Professional and Technical Engineers, Local 21  
Unit 043  
Memorandum of Agreement**

**July 1, 2009 through June 30, 2010**

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**EXHIBITS:**

**EXHIBIT I Job Classifications**

## **PREAMBLE**

The Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, on this 30<sup>th</sup> day of June 2009, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the Association of Engineers and Architects (AEA)/International Federation of Professional and Technical Engineers, Local 21 AFL-CIO, hereinafter referred to as the "Employee Organization" or "Union".

For the purpose of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2- Definitions of Resolution No. 39367 of the Council of the City of San 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 or from the specific language that a different meaning is intended.

## **ARTICLE 1 PURPOSE**

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

## **ARTICLE 2 PERIOD OF MEMORANDUM OF AGREEMENT**

This Agreement shall become effective July 1, 2009, except where otherwise provided, and shall remain in effect through the 30<sup>th</sup> day of June 2010. 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, 2010. It is mutually agreed that to begin negotiations for a successor Memorandum of Agreement, the first meeting of the parties will be held no later than twenty (20) calendar days after the City or AEA receives notice from the other, which may be any date after January 1, 2010. Changes would not go into effect until after the contract expires.

## **ARTICLE 3 AGREEMENT CONDITIONS**

### **3.1 Full Understanding, Modification and Waiver**

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

3.1.2 Existing benefits within the scope of representation provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code shall

be continued without change during the term of this Agreement and be provided in accordance with the terms of the Agreement.

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

3.1.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

3.1.5 Healthcare Cost Mitigation.

3.1.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2011, and January 19, 2011, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

3.1.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2011 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.

3.1.5.3 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 City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2011.

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

3.3 Concerted Activity It is understood and agreed that:

3.3.1 Participation by any employee represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.

3.3.2 If the Union, its officers or its authorized representatives violate provision 3.3.1 above or tolerate the violation of provision 3.3.1 above and after notice to responsible officers or business representatives of the Union, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 3.3.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Union shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Union, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer shall not be subject to review under the provisions of Article 18, Grievance Procedure.

3.4 Non-Discrimination

3.4.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, pregnancy, actual or perceived gender identity and political affiliation. The parties further agree that this section shall not be subject to the Grievance Procedure provided in this Agreement.

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

**ARTICLE 4 RECOGNITION**

Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Association of Engineers and Architects/IFPTE Local 21, hereinafter referred to as the “Union” is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement.

The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute an appropriate unit.

## **ARTICLE 5 MANAGEMENT RIGHTS**

- 5.1 Except to the extent that the rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to any law or the City Charter, including, but not limited to: The right to direct the work force; increase, decrease or re-assign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees 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. The City's failure to exercise a management right does not preclude the City from exercising it at some time in the future.
- 5.2 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 employees affected or the Association of Engineers and Architects/IFPTE, Local 21, representing such employee.

## **ARTICLE 6 UNION RIGHTS**

### **6.1 Authorized Representatives**

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

6.1.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative except where a particular Management representative is otherwise designated.

6.1.1.2 The Union's principal authorized agent shall be the President, or his/her duly authorized representative.

### **6.2 Union Representatives**

6.2.1 The City shall recognize up to two (2) Union Representatives who are properly designated by the Union.

6.2.2 The Union agrees that it shall designate as Union Representatives only full-time employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.

6.2.3 A Union Representative shall function under the terms of the grievance procedure in the department(s) or sections of a department(s) for which he/she has been

designated. Should a Representative be required to leave his/her assigned duties to investigate and/or process a grievance, he/she shall secure the permission of his/her immediate supervisor and inform the supervisor of the general nature of the grievance, and report back to the supervisor upon returning to his/her assigned duties. In the event it is necessary for a Representative to handle a grievance in a department other than the department to which he/she is regularly assigned, the Representative shall report to the immediate supervisor of the aggrieved employee to request to meet with the employee(s) involved in the grievance.

- 6.2.4 In the event the parties agree that a Representative or other representative of the Union is permitted to investigate and/or process a grievance other than as provided above, such representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.
- 6.2.5 Although the grievances may be investigated and/or processed during normal business hours, the Union agrees that the time spent by its designated representatives processing grievances during normal business hours shall be kept to a minimum.
- 6.2.6 The Union agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as Representatives.
- 6.2.7 The parties agree that they have a mutual interest in well-trained Representatives. Toward this end, up to one (1) designated Representatives shall be granted a maximum of eight (8) hours paid release time during each year of this agreement to participate in training sessions related to the provisions of this agreement, jointly conducted by the Union and the Office of Employee Relations, according to an outline of such training activities to be submitted by the Union and approved by the Office of Employee Relations prior to conducting any such training sessions.

### 6.3 Release Time

- 6.3.1 Release time from regular City duties shall be provided to designated Union representatives in accordance with the following provisions.
- 6.3.2 Designated Union Representatives One designated Union Representative shall be eligible for release time from regular City duties to attend the following meetings:
  - To attend Civil Service Commission meetings when matters affecting the Union are considered.
  - To attend City Council meetings when matters affecting the Union are considered.
  - To attend Federated Retirement Board meetings.

- To attend grievance meetings when used to facilitate settling of grievances.
- To attend Benefit Review Forum meetings.
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations.
- To attend meetings scheduled by Administration when attendance is requested.
- To attend other meetings and trainings approved by the Employee Relations Manager, or designee.

#### 6.4 Maintenance in Membership

- 6.4.1 Dues deduction, once initiated, shall continue until the authorization is revoked in writing by the employee. An employee may only revoke a dues authorization by delivering the written notice of revocation to the City's Municipal Employee Relations Officer with a copy to the Union. An employee may resign from such membership only during the thirty (30) calendar days prior to the expiration of this Memorandum of Agreement.
- 6.4.2 The written revocation notice shall be delivered to the Municipal Employee Relations Officer or his/her designee either in person at the Employee Relations Office or by regular U.S. Mail, with a copy to the Union.
- 6.4.3 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of the Article.

#### 6.5 Dues Deduction

- 6.5.1 The City will deduct from the pay of each employee covered by this Agreement, while such employee is assigned to a classification included in a representation unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer or designee.
- 6.5.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer or designee from time to time by the designated Officer of the Union as regular bi-weekly dues.
- 6.5.3 Deductions shall be made from wages earned by the employee each bi-weekly pay period. The City will remit to the designated Officer of the Union the

amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty-one (21) days following the pay period in which the deductions were made.

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

## 6.6 Bulletin Boards

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

6.6.5 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary or capricious manner.

6.7 Employee Lists The City shall provide a monthly list of bargaining unit employees, including new employees to the Union.

The City shall also provide to the Union a quarterly list of bargaining unit employees alphabetically with employee address, position title, employment date, and leave of absence status.

The Union agrees that such information will be treated in a confidential manner.

## **ARTICLE 7 TEMPORARY MODIFIED DUTY**

7.1 The City and the Union recognize that, employees may be temporarily unable to perform their full range of duties required of their position due to a work-related injury or illness. In order to provide gainful employment to these individuals and to maximize productivity, the City may create temporary modified job duties.

7.2 The City has the exclusive right to determine whether or not to create or eliminate temporary modified job duties and to assign eligible employees to fill such jobs.

7.2.1 The City shall not discriminate in assigning temporary modified job duties.

7.2.2 Employees assigned to temporary modified duties shall continue to accrue class seniority and other benefits based on hours worked.

7.3 Employees assigned to temporary modified job duties shall be returned to their regular jobs at such time as they are medically certified as capable of performing the full range of duties of said job.

7.4 If temporary modified job duties cannot be accommodated by the employee's department, the City will attempt to find temporary modified job duties elsewhere in the City. Departmental seniority will not be affected.

7.5 This Article, Article 7, is not subject to the grievance procedure.

## **ARTICLE 8 LEAVES**

8.1 Holidays

8.1.1 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 provided the employee has worked either his/her last scheduled workday before the holiday or his/her first scheduled workday after the holiday or the employee is in paid status:

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

8.1.2 When one of the above holidays falls on a Sunday, the following day shall be designated as the holiday; and when one of the above holidays falls on a Saturday, the preceding day shall be designated as the holiday.

8.1.3 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 holidays shall apply to employees in this unit.

## 8.2 Vacation

8.2.1 Vacation accrues at the following rate for each paid hour (either worked or paid absence or holiday closure):

- 1-5 years of service = .05875 (120 hours annually for full-time employees)
- 6-14 years of service = .07750 (160 hours annually for full-time employees)
- 15+ years of service = .09625 (200 hours annually for full-time employees)

8.2.2 Up to 240 hours may be carried over from one calendar year to the next. This carryover process shall expire at the end of 2007. At the end of each calendar year, employees may sell back up to 80 hours of earned, unused vacation if employee took five (5) consecutive days of vacation, executive and/or holiday leave the previous calendar year. Vacation may not be taken until the employee has been employed for at least thirteen bi-weekly pay periods. Effective the first pay period of payroll calendar year 2008, employees may elect to sell back vacation up to four (4) times per year, not more than once per quarter, for a maximum sellback of one hundred twenty (120) hours of accrued vacation per payroll calendar year.

Effective the first payperiod 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. Any employee who is already above two times their annual vacation rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

8.2.3 If employee separates from City service, the employee shall reimburse the City the appropriate dollar amount for any unearned, used vacation hours.

### 8.3 Sick Leave

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

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

8.3.2 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 a child for which the employee is legally responsible, mother, father, spouse or domestic partner registered with the Department of Human Resources. Up to 48 hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother or stepchild.

8.3.3 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Section 8.6 Disability Leave, or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time.

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

8.3.5 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Section 8.6 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Section 8.6, Disability Leave, 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 such employee's regular base pay.

8.3.6 Accrued sick leave also may be used in accordance with the Catastrophic Illness Time Donation Program.

- 8.3.7 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, or use of narcotics not prescribed by a licensed physician.
- 8.3.8 If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.
- 8.3.9 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf notifies his or her immediate superior or Department Director, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the Director of Employee Relations may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.
- 8.3.10 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
- 8.3.11 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, in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of twelve (12) consecutive months or for a maximum of eighteen (18) cumulative months in any period of twenty-four (24) consecutive months may be separated from City service. However, an employee who has reached this limit may apply for a leave of absence without pay pursuant to Section 8.11, Leave of Absence.
- 8.3.12 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact regularly assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.
- 8.3.13 No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not regularly assigned to work or would not have been required to work on that day, inclusive of any hours an employee elects to work in addition to their indefinite assignment, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

#### 8.4 Sick Leave Payout

- 8.4.1 Sick leave payout shall be given to each full-time employee at the time of retirement or death under one of the following conditions:

8.4.1.1 Federated Retirement Plan:

8.4.1.1.1 The employee is:

- A member of the Federated Retirement Plan, and
- Retired under the provisions cited in the plan, and
- Credited with at least fifteen (15) years of service in this retirement plan, or
- Credited with at least ten (10) years of service prior to a disability retirement.

8.4.1.2 Terminated Employee with Vesting Rights

8.4.1.2.1 The employee has:

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

8.4.1.3 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.

8.4.1.4 Death of Terminated Employee

8.4.1.4.1 The estate of any full-time employee who:

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

8.4.1.5 Payout shall be determined as follows:

8.4.1.5.1 If an eligible full-time employee, as defined in subsection 8.4.1 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.

- 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

8.4.1.5.2 If employee's balance is >1,200 hours, employee is also eligible for a payout of 75% of the value of sick leave in excess of 1,200 hours that is earned but unused during the two years prior to retirement.

8.4.1.6 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.

8.5 Executive Leave Employees will receive forty (40) hours of executive leave per payroll calendar year with supervisor approval. Forty (40) additional hours may be available, upon Departmental Director approval, for recognition of outstanding performance as part of the Management Performance Program. Executive leave that is not used by the end of the payroll calendar year does not accrue or carry over to the following year.

8.6 Disability Leave

8.6.1 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.

8.6.2 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 8.6.4.

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.

8.6.2.1 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 8.6.6.

8.6.3 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.

8.6.4 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.

8.6.5 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.

8.6.6 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.
- Nine (9) months (274 days or 1560 hours if not continually absent) following the date of injury.

- 8.6.7 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 five (5) years after the date of the onset of the injury or illness for which he/she is claiming DLS.
- 8.6.8 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.
- 8.6.9 Requirement of Evidence Proving Temporary Disability The Director of Finance 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.
- 8.6.10 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 Section 8.3, and with Workers' Compensation may be separated from City service.
- 8.7 Bereavement Leave Each full time or benefited part-time employee shall be granted bereavement leave with full pay for up to forty (40) work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within fourteen (14) calendar days following the death of an eligible person. Under extreme circumstances, the fourteen (14) day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.
- a) Parents/Step-parents
  - b) Spouse/Domestic Partner
  - c) Child/Step-child
  - d) Brother/Sister; Step-brother/sister; Half brother/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
- 8.7.1 A domestic partner, as referenced in Section 8.7, must be the domestic partner registered with the Department of Human Resources.
- 8.7.2 No eligible employee shall be granted Bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

8.8 Jury Duty Each full-time employee, or each part-time employee who is eligible for benefits, 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.

8.9 Witness Leave

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

8.9.2 Upon service of subpoena, an employee shall immediately advise his/her Department Director, or supervisor thereof, and of the time when he/she is required to appear in Court.

8.10 Union Leave

8.10.1 Union leave may be requested by the employee and the Union at least thirty (30) calendar days in advance in writing. One (1) employee represented by AEA, from each unit, (a total of three (3) employees), may be granted a leave of absence, not to exceed twelve (12) months. During the leave of absence, the employee shall be in an unpaid status (i.e. no vacation, holiday, and/or sick leave will accrue; however, the employee may maintain health coverage by paying the cost of health benefits (COBRA- the monthly group health premium rate).

8.10.2 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 a position in the department within the classification held by the employee at the time the leave commenced.

8.10.3 At least forty-five (45) calendar days prior to the completion of the status terms of the leave of absence for Union Leave, the Union shall notify the employer of the employee's intent to return to work. 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.

8.10.4 For the purposes of this Article, seniority shall be defined in accordance with Subsection 9.4.1 of Article 9, entitled Layoff.

8.10.5 Any employee who is absent without notification to his/her Department Director, or other designated authority, for two (2) consecutive workdays, shall be considered a voluntary resignation, unless the failure to report is due to extenuating circumstances beyond the control of the employee.

8.10.6 Employees who have been separated from City service for failure to return from leave, or failure to report, and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.

#### 8.11 Leaves of Absence

8.11.1 All requests for leaves of absence without pay shall be made in writing. 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, however, be extended, not to exceed an additional six (6) months, upon written request of the employee, subject to approval of the appointing authority, or his/her designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.

8.11.2 Appointing authority may grant leaves of absence without pay for an employee to work on Union business. Such leaves are subject to all the provisions in the Article.

8.11.3 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the 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 a position within a classification held by the employee at the time the leave commenced.

- 8.11.4 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.
- 8.11.5 The employee is responsible for coordinating the return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps taken.
- 8.11.6 For the purposes of this Article, seniority shall be defined in accordance with Subsection 9.4.1 of Article 9, entitled Layoff.
- 8.11.7 Any employee who is absent without notification to their Department Director, or other designated authority, for two (2) consecutive work days shall be considered a voluntary resignation, unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 8.11.8 Employees who have been separated from City service for failure to return from leave, or failure to report, and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.

## **ARTICLE 9 LAYOFF**

- 9.1 Order of Layoff When one (1) 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:
- 9.1.1 Probationary employees in the order to be determined by the appointing authority.
- 9.1.2 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.
- Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.
- 9.2 Notice of Layoff
- 9.2.1 Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Unions shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

- 9.2.2 Upon specific request by the Union, the City shall provide any available public, written documents relating to staffing levels in a given department or section of a department. If workload documentation is available, the City will provide it to the Union, upon written request.
- 9.3 Reassignment in Lieu of Layoff In the event of layoff, any employee so affected may elect to:
- 9.3.1. 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 he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 9.3.2. Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of Human Resources or his/her designee. An employee may also accept a vacant position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during his/her most recent period of employment. Adverse decisions of 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.
- 9.3.3 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.
- 9.4 As used in this Article, the following words and phrases shall be defined as follows:
- 9.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained, but shall not accrue, during any period of leave without pay, except for authorized military leave.
- 9.4.2 A lower class shall mean a class with a lower salary range.
- 9.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 9.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 9.5 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.

## 9.6 Layoff Reinstatement Eligible List

- 9.6.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 9.3, Reassignment in Lieu of Layoff, 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.
- 9.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 9.6.3 Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff shall have his/her name removed from the Reinstatement Eligible List.
- 9.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels, including, but not limited to emails, phone calls or regular mail 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 (3) year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director of Human Resources or his/her designee, be returned to the Reinstatement Eligible List. It shall be the responsibility of each person placed on the Reinstatement Eligible list to notify the Department of Human Resources of changes in contact information including, but not limited to email address, phone number or mailing address.
- 9.6.5 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 (3) years from the effective date of such person's most recent layoff. If there are employees on a Reinstatement Eligible List, the City will review such list prior to contracting-out work, or hiring outside work, to determine if the work could be performed by someone on the Reinstatement Eligible List.
- 9.6.6 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

## **ARTICLE 10 WAGES AND SPECIAL PAY**

10.1 Salary Ranges. Maintain current salaries in effect as of June 30, 2009.

### 10.2 Bilingual Pay

10.2.1 An employee must meet at least one of the following eligibility requirements and must be certified as bilingual for oral communication, written translation or sign language duties according to the current established procedure.

10.2.1.1 The employee is currently assigned to a position selectively certified based on bilingual ability by the Director of Human Resources, or his/her designee, or

10.2.1.2 The duties currently assigned and currently being performed by an employee have been designated by the Department Director or his/her designee as requiring utilization of a non-English language on a regular basis.

10.2.2 Each full-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of \$29.00 per biweekly pay period and for performing written translation duties at the rate of \$40.00 per biweekly pay period for each pay period actually worked.

10.2.3 Each part-time employee who meets the above eligibility requirements shall be compensated for performing oral communication or sign language duties at the rate of \$19.00 per biweekly pay period and for performing written translation duties at the rate of \$30.00 per biweekly pay period for each pay period actually worked.

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

### 10.3 Working in a Higher Classification

10.3.1 Upon specific written assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time employee may be required to perform the duties of a full-time position in a higher classification. Such assignments shall be made to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee.

10.3.2 As an alternative to making appointments to vacant positions, a Department may, upon the approval of the Office of the City Manager, assign an employee to work in a higher classification for a period of time not to exceed twelve (12) months. At the expiration of the assignment (not to exceed twelve months), the assigned employee shall return to his/her regular assignment. The Department may then

request authorization to fill the position on a regular basis or return it to vacant status.

10.3.3 Employees specifically assigned in writing to duties of a higher classification as specified above shall be compensated at the rate in the salary range of the higher class, which is at least two (2) salary rates (steps) higher in the salary range schedule, approximately equal to five percent (5%) higher than the rate received by the employee in the employee's present class. The employee shall not receive the rate of compensation, however, unless the assignment is for a minimum of three (3) consecutive months.

10.4 Mileage Reimbursement Each employee of the City who is authorized by the Department Director or designee to use the employee's private automobile in the performance of the duties of the employee's position, shall be paid as a travel allowance for such use of his/her private automobile a "mileage reimbursement rate" consistent with the City's rate.

## **ARTICLE 11 BENEFITS**

### **11.1 Health Insurance**

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

11.1.2 Effective at the beginning of pay period one (1) of payroll calendar year 2007, 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 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.

11.1.3 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 up to a maximum of one-hundred fifty dollars (\$150) per month. If the employee's 10% contribution for the lowest priced plan exceeds one-hundred fifty dollars (\$150) 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.

11.1.4 Effective at the beginning of pay period one (1) of payroll calendar year 2009, 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. 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.

11.1.5 Effective January 1, 2008, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay: \$10
- b. Prescription Co-pay: \$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: \$50

## 11.2 Dental Insurance

11.2.1 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 plans are described in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department.

11.2.2 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.

## 11.3 Payment In-Lieu of Health and Dental Insurance

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

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

11.3.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must

provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

11.3.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period, or within thirty (30) days of a qualifying event (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 thirty (30) day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

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

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

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

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

11.4 Life Insurance The City shall pay the full premium for employee coverage equal to two (2) times the employee's annual salary.

- 11.5 Employee Assistance Program (EAP) During the term of this agreement, the City will continue to provide an Employee Assistance Program at the level of benefit provided on the effective date of this agreement.
- 11.6 Professional Development Program The City will reimburse each employee 100% of expenses incurred, up to \$600.00 per fiscal year, pursuant to the terms and conditions of the Professional Development Program for employees represented by AEA, IFPTE, Local 21 as described in Section 4.3.2 of the City Policy Manual.
- 11.7 Training
- 11.7.1 The City and the Union recognize the importance of continuing education and the diverse training needs of the employees represented by the Association of Engineers and Architects. Therefore, the City shall endeavor to provide employees a minimum of twenty-four (24) hours of training per fiscal year. This goal will be accomplished through trainings mandated by Departments and the City.
- 11.7.2 The Union may make recommendations regarding training needs and advise department management and the Union/City Committee of specific training opportunities.
- 11.8 Professional Memberships Each employee is eligible for reimbursement for membership fees or dues paid for the maintenance of a license required to perform employee's job and for dues paid for membership in one additional job related professional association.
- 11.9 Management Performance Program Employees represented by AEA, IFPTE Local 21 are covered under the Management Performance Program, Section 3.3.2 of the City Policy Manual. Employees are eligible for performance-based pay increases as outlined in the Management Performance Program, Section 3.3.2 of the City Policy Manual.

## **ARTICLE 12 RETIREE HEALTHCARE FUNDING**

- 12.1 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.

- 12.2 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.
- 12.3 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.
- 12.4 The City will establish a qualified trust ("Trust") before June 27, 2010. 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.
- 12.5 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 13 SAFETY**

- 13.1 The City shall provide a safe and healthy working environment in accordance with applicable Local, State and Federal laws and regulations.
- 13.2 Any employee who believes a violation exists may request that the City make a determination as to the safeness of the work assignment and further, be protected under the Cal/OSHA regulations, including but not limited to Labor Code Section 6311.

## **ARTICLE 14 PERSONAL PROTECTIVE EQUIPMENT**

- 14.1 The City agrees to make available all required personal protective equipment when needed during the normal course of work (i.e., protective eyewear, protective footwear) in compliance with Cal-OSHA regulations and upon approval of the Department Director or designee.
- 14.2 The requirements for safe working conditions are established and maintained under the California Occupational Safety and Health Act of 1973. Enforcement and rule-making authority is lodged with the Department of Industrial Safety. The Department of Industrial Safety has jurisdiction for inspection and enforcement of standards; therefore, any disputes arising relating to employee safety will be exempted from the grievance procedure.

## **ARTICLE 15 PROBATIONARY PERIODS**

- 15.1 Probationary Period Calculation Probationary periods shall not be less than six (6) 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.
- 15.2 An employee's probationary period may be extended at the discretion of the City up to a maximum of six (6) months of actual and continuous service. The employee will be notified in writing of the length and reason for the extension.

## **ARTICLE 16 ANNUAL PERFORMANCE APPRAISAL**

- 16.1 The purpose of the annual performance appraisal is to have formal communication between supervisor and employee regarding job performance. It is of value to both parties to have this process be meaningful and fair. Employees shall receive an annual performance appraisal.

## **ARTICLE 17 DISCIPLINARY ACTION**

- 17.1 The City of San Jose discipline policy is described in City Policy Manual, Section 2.1.3. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, salary step reduction, demotion and dismissal.
- 17.2 Step Reduction: In addition to formal disciplinary actions of suspension, demotion, and dismissal, contained in the San Jose Municipal Code, the appointing authority may reduce an employee's salary. The salary may be reduced to no lower than the bottom of the salary range, and the amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action, including the amount and the length of

time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

- 17.3 No 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 the appeal through the grievance procedure of this Agreement.

## **ARTICLE 18 GRIEVANCE PROCEDURE**

- 18.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Union may file a grievance on behalf of such employee(s).
- 18.2 Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.
- 18.3 Grievances involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article.

### **18.3.1 STEP I**

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

### **18.3.2 STEP II**

- 18.3.2.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

18.3.2.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

18.3.2.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

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

### 18.3.3 STEP III

18.3.3.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original grievance to the Municipal Employee Relations Officer, or his/her designee, within five (5) working days following receipt of the written decision at Step II.

18.3.3.2 Within fifteen (15) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer, or his/her designee, shall hold a meeting with the employee, the appropriate Union representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Union representative within ten (10) working days following the meeting.

18.3.3.3 If the decision of the Municipal Employee Relations Officer, or his/her designee, is unsatisfactory, the appropriate Union representative may appeal the grievance to Step IV- Arbitration.

### 18.3.4 STEP IV - ARBITRATION

18.3.4.1 If the grievance has been properly processed through the previous steps of the procedure and is not resolved, the appropriate Union

representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, or his/her designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.

- 18.3.4.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer, or his/her designee, with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, is.
- 18.3.4.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 18.3.4.4 Within ten (10) working days following receipt of the above referenced list, the parties complete the arbitration selection process. 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.
- 18.3.4.5 The parties shall hold a discussion at least ten (10) working days prior to the arbitration hearing date to narrow issues for arbitration, determine possible stipulations and exchange documents intended for use at the hearing. The parties shall contact the selected arbitrator within ten (10) working days in order to schedule the arbitration hearing at the earliest mutually convenient date.
- 18.3.4.6 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue or issues involved.
- 18.3.4.7 The decision shall be sent to the Municipal Employee Relations Officer, or his/her designee, and to the employee or appropriate representative of the Union.

- 18.3.4.8 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing. Court reporter fees are also shared equally among the parties.
- 18.3.4.9 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.

#### 18.3.5 General Provisions

- 18.3.5.1 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, except for appeals to Step IV, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 18.3.5.2 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 18.3.5.3 Working days as used in this Article shall be defined as the Monday thru Friday regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 18.3.5.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Section 8.11, Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.

- 18.3.5.5 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.

## **ARTICLE 19 UNION/CITY COMMITTEE (UCC)**

- 19.1 Purpose: To serve as an advisory committee and to facilitate employee involvement in issues which affect the immediate work environments. To provide regular communication between the Union and the City, to address workplace issues, and to facilitate positive Union-City relations.
- 19.2 Structure: The Union/City Committee is established by mutual agreement. The City and the Union shall each select their own representatives and in equal number, with no more than three on each side. Each side is encouraged to propose issues for discussion, and the committee will jointly set priorities. Decision making within this forum will be by consensus. The UCC will set up regular meetings and a means for calling additional meetings to handle issues on an ad hoc basis.
- 19.3 Authority: The UCC are not authorized to meet and confer or create contractual obligations nor are they to change the MOA to authorize any practice in conflict with existing contracts or rules. The Office of Employee Relations and AEA/IFPTE Representative/Organizer will be involved in UCC meetings upon request, and the UCCs should keep both parties informed of their discussions and any written material they generate.
- 19.4 The UCC has the authority to set up subcommittees, departmental committees and ad hoc committees when it deems them appropriate and necessary. The Committee will act as a steering committee for subcommittees.

## **ARTICLE 20 CONTRACTING IN**

- 20.1 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.
- 20.2 The City and the Union commit to delivering the CIP and related projects with the highest quality, on time and on budget. The City commits to engage with the Union to identify and discuss opportunities to in-source (“contract-in”) the performance of various services either currently, or planned to be, performed contractually by non-City employees, through the joint Contracting-In-Pilot Project and through other available means, outside of the meet and confer process.
- 20.3 The City has established a Contracting-In Pilot Project Steering Committee for review and evaluation of the effectiveness of the Contracting-In Pilot Project. The Committee

meets monthly to review the implementation status of the pilot project, remove barriers to implementation, discuss and work for resolution of issues that may arise. The Union will sit on this committee as a full participant.

THIS AGREEMENT executed on the 30<sup>th</sup> day of June, 2009 between the City of San Jose and The Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21 (Unit 43), 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 August 4, 2009, and ratified by the Association of Engineers and Architects, IFPTE Local 21 on July 17, 2009.

For The City of San Jose:

For The Association of Engineers and Architects, IFPTE Local 21 (AEA):

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Debra Figone  
City Manager

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Nancy Ostrowski, Labor Representative  
AEA/IFPTE, Local 21

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Alex Gurza, Lead  
Director of Employee Relations

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John Mukhar, President  
AEA/IFPTE, Local 21

**EXHIBIT I**

**Association of Engineers and Architects, Unit 43 Salaries  
Effective June 29, 2008**

<b>Job Code</b>	<b>Classifications</b>	<b>Biweekly Schedule Effective June 29, 2008</b>
3893	Engineering Maint Svcs WPC	\$4,134.40 - \$5,233.60
3844	Senr Architect/Landscape Arch	\$3,938.40 - \$4,983.20
3815	Senior Engineer	\$3,938.40 - \$4,983.20
3874	Engineering Geologist	\$3,270.40 - \$4,139.20

