

MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

**POLICE OFFICERS ASSOCIATION
UNIT #2**



DECEMBER 17, 2006 – DECEMBER 25, 2010

MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
POLICE OFFICERS ASSOCIATION, UNIT # 2

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MEMORANDUM OF UNDERSTANDING
between
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and
POLICE OFFICERS ASSOCIATION, UNIT # 2

DECEMBER 17, 2006 – DECEMBER 25, 2010

In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979, entitled "Employer-Employee Relations", this Memorandum of Understanding (MOU) constitutes the results of discussions between the City Management Staff (City) and the formally recognized representatives of the Santa Clara Police Officers Association (Association) on all matters within the scope of representation December 17, 2006 through December 25, 2010.

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

1. TOTAL COMPENSATION

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

- 1) Salary
- 2) Fringe Benefits:
 - a. Retirement**
 - b. Holiday Pay*
 - c. Vacation Pay*
 - d. Uniform Allowance
 - e. Mandatory Health Ins**
 - f. PERS Health Fund**
 - g. Other Pay
 - h. Retiree Medical
- 3) Insurance
 - a. Life
 - b. Health
 - c. Dental
 - d. Psychological Counseling

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

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

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

C. It will be a requirement of the Association to allocate each year in advance, in accordance with the attached tabular description, and consistent with this MOU, the distribution of total compensation monies within the following element areas as noted in Section 1A.: 1) salary, 2) fringe benefits, 3) insurance premiums/counseling, and 4) medical insurance premiums, subject

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

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

2. ADJUSTMENT OF TOTAL COMPENSATION

- A. YEAR 1 (2007). Effective December 17, 2006, through December 15, 2007, for all classifications represented by the Association, the total compensation array will be adjusted to reflect the change in the City's CalPERS rate for the period of July 1, 2006 through June 30, 2007. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate above 7.381% within the Total Compensation Array.

In addition, the City shall adopt a monthly total compensation schedule, for all classifications represented by the Association, which will reflect the amount necessary to bring the total compensation of the classification of Police Officer to 5.0% above the benchmark average in the City's total compensation survey. The survey will measure the total compensation of the benchmark classification of Police Officer after five (5) years of service for the cities of Mountain View, Palo Alto, San Jose, Hayward, Milpitas, Redwood City and Santa Clara County from October 1, 2005 through October 1, 2006.

- B. YEAR 2 (2008). Effective December 16, 2007, through December 13, 2008, for all classifications represented by the Association, the City shall increase total compensation by 4.5%. The total compensation array also will be adjusted to reflect the change in the City's CalPERS rate for the period of July 1, 2007 through June 30, 2008. The City will continue to contribute fifty percent (50%) of the employer CalPERS retirement rate above 7.381% within the Total Compensation Array.

For Year 2 of this MOU, the 5.0% above the benchmark average provision set forth in the second paragraph of Section 2.A. will be held in abeyance.

- C. YEAR 3 (2009). Effective the pay period commencing December 14, 2008, through December 26, 2009, for all classifications represented by the Association, the City shall increase the total compensation by 5.0%. The total compensation array will also be adjusted to reflect the change in the City's CalPERS rate for the period of July 1, 2008 through June 30, 2009. The City will continue to contribute fifty percent (50%) of the employer CalPERS retirement rate above 7.381% within the Total Compensation Array

For Year 3 of this MOU, the 5.0% above the benchmark average provision set forth in the second paragraph of Section 2.A. will be held in abeyance.

- D. YEAR 4 (2010). Effective the pay period commencing December 27, 2009, through December 25, 2010, for all classifications represented by the Association, the City shall increase the total compensation by a minimum of the change in the Consumer Price Index (CPI) from October 1, 2008 to October 1, 2009. The total compensation array will also be adjusted to reflect the change in the City's CalPERS rate for the period of July 1, 2009 through June 30, 2010.

If the CPI adjustment does not bring the total compensation to or above the 5.0% benchmark average, the City shall adopt a monthly total compensation schedule, for all classifications represented by the Association, which will reflect the amount necessary to bring the total compensation of the classification of Police Officer to 5.0% above the benchmark average. The survey will measure the total compensation of the benchmark classification of Police Officer after five (5) years of service for the cities of Mountain View, Palo Alto, San Jose, Hayward, Milpitas, Redwood City and Santa Clara County from October 1 through October 1.

- E. Prior to February 1 of each year of this MOU, if it is determined by the Santa Clara Police Officers Association and representatives of Management of the City of Santa Clara, that any of the classifications represented by the Association are 2.5% below the survey average in salary after the common salary adjustment afforded on the dates specified in Sections 2A, 2B, 2C, & 2D; the City of Santa Clara shall adjust such classifications to the nearest salary range to bring them as close as possible to 2.5% above the survey average on the current salary schedule in effect for classified police. This adjustment will become effective the first day of the first full pay period in February of each year.

- F. There will be no retirement enhancements during the term of this MOU.

1) It will be the prerogative of the Association to allocate, during the term of this MOU, total compensation monies among the element areas as defined in the foregoing. Specific retirement benefits, excluding City's payment of all or part of the represented employee's share of CalPERS contributions, as may be allowed by the Public Employees Retirement System may be added or deleted subject to the following conditions.

- a. All such changes will have equal application to all public safety personnel, including eligible members of the Fire Department, if the modification will increase the City contribution rate for public safety employees.
- b. The Association will assume the responsibility of coordinating with the eligible members of the Fire Bargaining Units and Police Management

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Unit any desired retirement modifications prior to submission to the City, and be prepared to ensure the City, in writing, that such modifications are consistent with the wishes of the majority of eligible personnel in each of the Public Safety Units.

- c. A minimum of nine (9) calendar months advance notice will be given the City, in writing, specifying the nature of the desired changes.
 - d. Any cost associated with obtaining the proposed retirement benefit such as actuarial valuations or administrative expenses imposed by CalPERS shall be paid by the Police and Fire units. Before any such costs are incurred, representatives of one of the two units must assume the responsibility of reimbursing the City for all related costs upon demand.
- G. It is recognized by both parties to this agreement that it is their mutual responsibility to independently verify, to the extent possible, the accuracy of the information upon which total compensation adjustments are made. Should it be discovered by either party that adjustment(s) to salary and fringe benefits are based on erroneous information or has been erroneously computed, the necessary corrective action will be taken as soon as practical after the discovery and notice of the error has been given. It is the mutual responsibility of both parties to report any suspected error immediately upon discovery to the other party. However, the period for which there will be a right to recover any monies which are either overpaid by the City or underpaid to the employee shall be limited to an adjustment period of up to 90 calendar days from the date the error was first reported to the other party. The corrective action will be taken even in circumstances where the error may bridge successive MOU's, but the recovery will still be limited to amounts owed or owing during the prior 90 calendar days. The 90 calendar day period will begin upon the date of written notification by personal service upon the other party.

Right of recovery by the City of overpayment shall be limited to recovery over the same period as the overpayment was made. Said repayment will begin with the next paycheck following final determination of the amount to be repaid. Underpayment to the employee shall be made by the City in a lump sum of the amount owed on the next regular paycheck following final determination of the amount to be paid.

POLICE OFFICERS ASSOCIATION DEFINITIONS

1. Top Step Salary - Maximum step in the monthly salary range for classification (excluding longevity steps).
2. Life, Health, Dental, LTD and other Insurance - Maximum agency monthly contribution per employee to insurance premiums as defined in Item 1A3 plus maximum agency monthly contribution to other fringe benefit insurance premiums.
3. Retirement - Maximum agency monthly contribution per employee to retirement.
4. Holiday Pay - Number of paid holiday hours allowed by agency per year times hourly salary rate of classification, divided by 12.
5. Vacation Pay - Maximum number of annual paid vacation hours allowed by agency per employee upon completion of five (5) years service times hourly salary rate for classification divided by 12.
6. Other - Monthly salary equivalent of or maximum monthly agency contribution to other fringe benefits available to all full-time agency employees. To be eligible for inclusion in comparison data, such benefits of the comparing jurisdiction must be of a recurring nature or become part of their compensation base.
7. Psychological Counseling - Actual dollar amount paid for this service during the prior fiscal year divided by the number of budgeted employees divided by 12.
8. Total Compensation - The sum of Items 1 through 7 above.
9. Hourly Salary Rate - Top step salary as defined in Item 1 above times 12 divided by total number of regular work hours per year.

10. Regular Rate -

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

POLICE OFFICERS ASSOCIATION
TABULAR DESCRIPTION OF
ADJUSTMENT OF TOTAL COMPENSATION

October 1, 2010

Determine the average total compensation as of October 1 afforded benchmark classifications specified in Item 1B in the comparing agencies noted therein. By November 30, 2010, determine the percentage change in average monthly total compensation afforded said benchmark classifications in the comparing agencies and provide said information to Association.

If a comparing agency adopts a total compensation adjustment after the City has adopted and implemented the total compensation allocation for the following calendar year, and the effective date of the comparing agency's subsequently adopted total compensation adjustment is on or before October 1 of the survey year, the City will recompute the total compensation array, either upward or downward, and such adjustment will be applied effective beginning the pay period following confirmation of the adjustment(s).

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

Upon ratification 2006; December 10, 2007; December 10, 2008, and December 10, 2009

Association provides City with total compensation allocation to be in effect for the forthcoming calendar year.

December 17, 2006, December 16, 2007, December 28, 2008 & December 27, 2009

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

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Prior to February 1, 2007, 2008, and 2009	Association provides to the City findings that any represented classification is 2.5% or more below the survey average for that classification.
First pay period of February, 2007, 2008, and 2009	City verifies Association findings and adjusts the salary range for classifications which are found to be 2.5% below the survey average to the range on the salary schedule currently in effect which is closest to 2.5% above the survey average.

3. CHANGES IN ASSIGNMENTS

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

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

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

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

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

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

4. CHEMICAL TESTING

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

It will be the responsibility of any represented employee to comply with the Santa Clara Police Department policy on drug and alcohol use, and pursuant thereto, to submit to a blood, breath or urine test as appropriate, when ordered by the Chief of Police or his/her designee. All chemical testing shall be administered in a

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medically approved manner and as soon as practical after being ordered, but no later than six (6) hours after the incident, whether the employee is on-duty or off-duty at the time of the occurrence whenever any of the following occur:

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

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

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

Demands for drug or alcohol analysis by supervisors which are determined to be

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malicious will not be tolerated and may subject the directing individual to disciplinary action.

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

"Serious bodily injury" is defined as a serious impairment of physical condition, considerably beyond a complaint of pain or minor injury that requires immediate professional medical treatment at a hospital or similar facility.

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

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

5. MOTORCYCLE CLEANING

The past practice of allowing overtime for the cleaning of motorcycles has been abolished. Regular, on-duty time will be allowed for this purpose, as assigned by the supervisor.

6. HOLIDAY PAY

Effective with the first pay period of 2004 (December 21, 2003) the number of hours per year for holiday pay will increase to 104 hours (equivalent to 13 work days based on eight (8) hours per day) for all represented employees.

It shall be the prerogative of Unit #2 to add one-half (1/2) day to the number of allocated holidays as of January 1st of the following calendar year. However, it is understood that should such an addition occur, it will be charged against prospective total compensation and payment for such addition will be prorated over 26 pay periods as is the current practice.

Any additional permanent holidays designated by the City Council will be afforded represented employees. However, such holidays will be charged against prospective total compensation and payment for such holidays will be prorated over 26 pay periods as is the current practice.

7. SICK LEAVE/FAMILY SICK LEAVE

A. SICK LEAVE

1) Employees shall accrue ninety-six (96) hours of sick leave per calendar year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.

2) Vacation and CTO may be used to supplement sick leave as available.

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- 3) Sick leave will have an unlimited accrual for use. However, payment of sick leave at retirement will be limited to a maximum of 1,500 hours. For employees who have accumulated more than 1,500 hours, the employee shall not be permitted to receive payment at retirement for more than the hours they had on the books as of January 1, 2004, plus 1,500 hours.
- 4) Upon retirement, an employee with at least fifteen (15) years of City service shall be entitled to payment for a portion of their accumulated sick leave balance, as follows:
 - a. An employee with 15 years of City service shall be entitled to be paid 25% of the sick leave accumulated.
 - b. An employee with 20 years of City service shall be entitled to 50% of the sick leave accumulated.
 - c. An employee with 25 years or more service shall be entitled to 75% of the sick leave accumulated.

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

B. FAMILY SICK LEAVE

- 1) Not more than forty eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

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

8. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section. Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent (including step, adoptive and in-law), child (including step, adoptive and in-law), sibling (including step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent

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(including step, adoptive and in-law), grandchild (including step, adoptive and in-law), aunt (including step, adoptive and in-law) or uncle (including step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of their own or a step, adoptive, or in-law great-grandparent, great-grandchild, niece, nephew, or first cousin.

- B. The bereavement leave benefit is based on each death occurrence and is not charged through the total compensation model.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

9. LIGHT BODY ARMOR

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

New or replacement body armor issued after January 1, 1996 shall be of a Threat Level #2 classification and shall be replaced by the City upon the expiration of the manufacturer's warranty for that unmodified dealer issued unit. Any represented employee may purchase a vest of his/her choice provided that it meets or exceeds the City's warranty and protection requirement; however, the employee must bear the difference in cost between the allocation provided by the City and the actual cost of the vest of his/her choice. All body armor issued to represented employees shall be new and custom fitted to the individual officer. Body armor damaged in the course and scope of employment shall be replaced immediately if determined to be unserviceable. Current issue body armor damaged by misuse or gross negligence shall be replaced subject to a prorata formula based upon a five (5) year life expectancy. New or replacement body armor issued after January 1, 1996 damaged by misuse or gross negligence shall be replaced subject to a pro rata formula based upon the manufacturer's warranty.

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

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

10. UNIFORM ALLOWANCE

- A. The amount allocated for uniform allowance will be set by the Association on an annual basis. Payments for uniform allowance will be made bi-weekly after twelve (12) continuous months of City service.

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- B. The City shall provide for the repair of or replacement, based on the remaining useful life of the uniform article, damaged while actively engaged in the line of duty.
- C. The City shall provide, but retain ownership of, the following safety and special equipment, at no cost to the employee:
 - 1) Duty handgun with three magazines
 - 2) OC Spray
 - 3) Two pairs of Handcuffs
 - 4) 26-inch Baton and/or Collapsible Baton
 - 5) Complete leather gear including trouser belt, duty belt, holster, equipment holders, key strap and keepers
 - 6) Flashlight and holder
 - 7) Rain jacket and pants
 - 8) Whistle
 - 9) Set of BDU's with Name Tags and Patches
 - 10) Approved Gas Mask with carry bag
 - 11) Kevlar Helmet with face shield
 - 12) Protective vest as outlined in Section 9 (Light Body Armor)
- D. For employees assigned to motorcycle duty, the City shall provide, but retain ownership of, the following safety and special equipment, at no cost to the employee:
 - 1) Motorcycle riding boots
 - 2) Motorcycle riding breeches
 - 3) Summer and winter gloves
 - 4) Clear safety glasses
- E. All safety equipment supplied by the City damaged while actively engaged in the line of duty shall be replaced at no cost to the employee. Additionally, all safety equipment rendered unserviceable by normal wear and tear will be replaced at no cost to the employee.

11. CITY PURCHASE OF DEPARTMENT BADGES

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

12. PSYCHOLOGICAL COUNSELING

A represented employee may avail him/herself of a City designated psychologist or psychiatrist for stress counseling. It is understood between the parties that such counseling sessions will be confidential on a patient/doctor relationship with the following exception. If, in the opinion of the psychologist/psychiatrist, the employee being counseled represents a hazard to him/herself in the performance of his/her duties, or to others, such information will be provided the Chief of Police or designee on a confidential basis. It is further understood that such information may be the basis for the Chief of Police or designee to alter the

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assignment of the affected employee or to remove the employee from active duty, either on a temporary basis or on a permanent basis. Any removal from active duty will be in compliance with the rights and obligations of the City with full compliance with the rights of the affected employee. The City reserves the right to inquire into the circumstances of such mental disability to determine whether or not the alleged disability is job related.

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

- A. For each visit, the employee will pay \$10.00.
- B. For all visits, the employee will submit a claim to any medical insurance carrier available to him/her that provides such coverage.
- C. The uninsured costs of all visits will be borne by the City.
- D. Prior to the 21st visit to the provider in any calendar year, the provider shall advise the City that a represented employee has used the service 20 times in that calendar year. The represented employee will not be identified. However, the City will have the right to assure itself that the represented employee is not placing the City or others at risk by being permitted to continue working.
- E. The amount paid by the employee and any insurance payments will be made directly to the psychologist/psychiatrist and, upon proof of payment by either or both the employee and the insurance carrier (if appropriate) to the psychologist/psychiatrist, the City will bear the cost of the remaining expense.

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

13. OFFICERS' STATUS WHILE UNDER INVESTIGATION

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

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

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

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

14. VACATION ACCRUAL AND USAGE

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

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

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

- B. Vacation may not be taken during the first six months of employment with the City. Following the completion of the first six months of employment represented employees are eligible to take all or a part of earned vacation that has been posted to his/her account on a bi-weekly basis, subject to the departmental vacation use policy.
- C. Vacation may be taken in 1/10th hour increments.
- D. Employees who reach the maximum number of accrued vacation hours cease to earn vacation during any bi-weekly pay period when their vacation balance has reached the maximum accrual allowed for their current service. Vacation time that is not accrued to an employee because he/she has reached the maximum accrual limit will be credited to the Emergency Paid Leave Pool established under this MOU.
- E. It is recognized that the long standing policy of the City as set forth in the Personnel and Salary Resolution provides that "Vacations shall be taken as determined by the Department Head, subject to the approval of the City Manager. Vacation eligibility will be as set forth in the current Memorandum of Understanding subject to any limitations contained therein." The

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Association agrees with and will abide by this provision irrespective of any method of vacation scheduling which may now be in place.

- F. An employee may, on a once-per-year basis, convert a maximum of forty (40) hours of accrued vacation to cash at his/her current hourly rate of pay, subject to having a sufficient balance of accrued vacation available.
- G. In lieu of receiving a vacation-leave cash payout at retirement, the Association may vote to roll accrued vacation leave hours into the employee's Voluntary Employee Beneficiary Association (VEBA) account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

15. COURT CALLBACK POLICY

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

If the Officer elects to remain in a standby status, no compensation will be provided to him/her. If the Officer voluntarily reports to the Police Department under the conditions established by the Chief of Police, he/she will be compensated for a minimum of three (3) hours at the overtime rate on a regularly scheduled workday and for a minimum of four (4) hours at the overtime rate on a day off. A "day off" shall be defined as a day that is so indicated on the Department/ Division time sheet used for payroll purposes.

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

16. OVERTIME PAY

- A. Represented employees will be compensated at the overtime rate of 1½ time their regular rate of pay for any hours worked in excess of their normal shift. If the overtime overlaps with the beginning of their shift or occurs at the end of their shift, they will be compensated only for the actual time worked.
- B. If preplanned overtime and/or callback overtime does not overlap the employee's regular work shift, the employee will be compensated for a minimum of three (3) hours at the overtime rate.

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

17. DOUBLETIME PAY

Continuous emergency overtime that extends the regular work shift for a

represented employee for more than one and one-half (1-1/2) the number of hours of that shift (12 hours for 8 hour shifts and 15 hours for 10 hour shifts) will be paid at two times the represented employee's regular pay rate for the regular shift. If the extended time occurs on an overtime assignment, the double time rate will apply to the hourly rate upon which the time and one-half overtime rate is based.

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

For all consecutive hours worked, including the regularly assigned shift, overtime will be paid at 1-1/2 times the regular rate for the first half shift of overtime and double time for all overtime hours in excess of the first half shift of overtime. If all or a portion of a second regular shift is worked without an interruption, straight time overtime will be paid in addition to the regular time for the hours worked on that shift.

18. REST PERIOD FOLLOWING EMERGENCY WORK

- A. Any employee working eight (8) or more hours at the overtime rate during the fifteen (15) hour period immediately preceding the beginning of his/her regular work shift shall be entitled to a rest period of six (6) consecutive hours on the completion of such overtime work with the following provisions:
- 1) No employee shall be required to work in excess of sixteen (16) hours without rest unless an emergency is investigated and continued work is deemed necessary to prevent extreme property damage or to preserve human life.
 - 2) If the six (6) hour rest period overlaps his/her regular work shift in whole or in part, he/she will be paid at the straight-time rate for the time which falls within his/her regular work shift.
 - 3) If the six (6) hour rest period overlaps a portion of the first half of his/her work shift the employee may be excused from work until the beginning of the second half of said shift. If the six (6) hour rest period overlaps a portion of the second half of his/her work shift, he/she may be excused from work until the following work shift. He/she will be paid, however, only for that portion of the rest period which overlaps his/her normal working shift. He/she will not be paid for the time between expiration of the rest period and his/her reporting for work.
 - 4) Hours worked prior to a six (6) hour rest period shall not be included in determining another rest period.
 - 5) If the employee is called back to work during his/her six (6) hour rest period, a new rest period will commence at the conclusion of such work.
 - 6) Notwithstanding the foregoing, if the employee is required to work during regular work hours on a work shift without having had a rest period of six (6) hours, for which he/she has qualified as set forth above, he/she shall be paid at the overtime rate for all work performed until he/she has been relieved from duty for at least six (6) hours.

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- 7) Any employee called out on emergency and working less than four (4) hours and said emergency ends, shall be entitled to up to one (1) hour time off if needed to prepare for the regular shift and suffer no loss of regular pay should said time off fall, in whole or part, into his/her regular shift.

19. NIGHT SHIFT DIFFERENTIAL

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

20. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

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

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

Effective May 2004, the City ceased making contributions to employee VEBA accounts and instead provided a Retiree Medical Reimbursement Benefit. Employee VEBA accounts remained and will remain open for other potential contributions. Effective beginning December 16, 2007, the City will contribute \$50 per month to employees' VEBA trust accounts.

21. RETIREE MEDICAL REIMBURSEMENT BENEFIT

The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with a CalPERS retirement with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the first full month of retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting with the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental insurance premium or unreimbursed single retiree health insurance premium. For premiums paid in calendar year 2006 that will be reimbursed in 2007, the City will reimburse an amount of \$264 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$159 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium or unreimbursed single retiree health insurance premium. The amount of the City reimbursement will be

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adjusted once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.

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

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

22. PREMIUM PAY

A. Special Response Team (SRT)

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

B. Motorcycle Duty

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

C. Field Training Officer (FTO)

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

The Department and Association will work together to develop guidelines for duties performed by a Field Training Officer when not training a new Officer.

D. Narcotics Task Force and Specialized Crimes Action Team (SCAT)

All employees in the classification of Police Officer who are assigned to the Narcotics Task Force will be compensated an additional 5% salary differential for all time spent in such assignments. The 5% salary differential for time spent assigned to the Narcotics Task Force or Specialized Crimes Action Team (SCAT) shall be compensated in the same manner as Motorcycle Officers and SRT. It shall be the responsibility of the Department timekeeper to mark the bi-weekly

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payroll sheets for the time spent in the Narcotics Task Force or SCAT to indicate the amount of time spent performing this particular type of duty.

“Narcotics Task Force” is synonymous with successor narcotics assignments in which the officer is assigned to work singly or with a group composed of single agency personnel or with multi-agency personnel, so long as the assignment is full-time narcotics investigation.

23. ON-CALL PAY

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

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

24. FIELD EVIDENCE TECHNICIAN PAY

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

25. ARMORER COMPENSATION

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

26. BILINGUAL PAY

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

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

employee if transferred or promoted.

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

27. RECRUITMENT INCENTIVE

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

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

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

28. TEMPORARILY WORKING IN A HIGHER CLASSIFICATION

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

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

29. UNIFORMITY OF SALARY STEPS

The salary schedule will be developed as follows:

- A. There will be a five percent differential in the hourly rate between salary steps 1, 2, 3, 4, 5, and 7. Salary step 6 will be the mid-point between salary steps 5 and 7.

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

30. STEP INCREASE EFFECTIVE DATE

The practice of awarding step increases is as follows:

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

31. TRAVEL COMPENSATION FOR TRAINING

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

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

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

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Travel time for training which is approved at the request of the employee and which takes place outside regular work hours will not be eligible for compensation.

32. TRAVEL COMPENSATION WHILE ON EXTRADITION ASSIGNMENT

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

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

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

33. PER DIEM

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

34. CANINE CARE

- A. Represented employees serving as Canine handlers are entitled to up to 3 ½ hours per week of paid time off for the care of the assigned canine. Time off shall not be charged to any other leave balance.
- B. In the event a canine is killed in the line of duty, the City shall provide for burial arrangements that meet with the City's approval.

35. COMPREHENSIVE MEMORANDUM OF UNDERSTANDING

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

36. INSURANCE PREMIUM REFUND/DEDUCTION SCHEDULE

City health insurance coverage will be at the option of the individual employee.

The Health/Dental insurance refund/deduction schedule will be based upon 12 payments per year. Payments will be refunded/deducted during the first

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paycheck issued in each month. Refunds are paid when the total allocation from total compensation for health and dental insurance is greater than the monthly premium cost for health and dental insurance for the employee. Deductions are taken when the total allocation from total compensation for health and dental insurance is less than the monthly premium cost for health and dental insurance for the employee.

37. ASSIGNMENT BID SYSTEM

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

38. 10 PLAN

- A. Represented employees who are assigned as Desk Officers will be assigned to work a 10-hour, four (4) day workweek.
- B. Represented employees who are assigned to the Field Operations Division will be assigned to a 10-hour, four (4) day workweek.
- C. Represented Sergeants who are assigned to the Services Division will be assigned to a 10-hour, four (4) day workweek.
- D. The exact hours of assignment will be as defined in a program that has been developed jointly by the City and the Association.

39. LIMITED/ALTERNATIVE DUTY

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

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

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

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

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

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

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

40. EMERGENCY PAID LEAVE POOL

ADMINISTRATION

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

METHOD OF DONATION

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

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- D. Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the Pool when the employee's vacation accrual has reached the maximum allowed.
- E. Funds contributed to the Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- F. Nothing herein shall preclude a donation of leave or funds to a member of Unit 2 from employees in other bargaining groups, nor preclude such a donation by employees in Unit 2 to employees in other bargaining groups.

USE OF POOL

- A. Employee must have a verified emergency need for time off to request emergency paid leave from the Pool. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency.
- B. Employee must have exhausted appropriate paid leave (sick leave, vacation or CTO) prior to becoming eligible to request emergency paid leave from the Pool.
- C. The maximum time available from the Pool (subject to the assets of the Pool) will be 320 hours (four [4] pay periods) for emergency paid leave benefits due to the illness or injury of the employee or the maximum hours allowable for accrual of vacation for emergency needs of the family of the employee.
- D. Emergency paid leave dollars will be deducted from the Pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay) times hours deducted from the Pool.
- E. Emergency paid leave hours will be made available for use in the pay period following approval by the Association.
- F. Use of emergency paid leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- G. Emergency paid leave that has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the Pool. Vacation, sick leave and other benefits that have accrued to the employee will remain in the employee's account.

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

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

accrual during that pay period.

42. INDEMNIFICATION FOR ACCIDENTAL OFF-DUTY DISCHARGE OF FIREARMS

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

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

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

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

43. LAY-OFF POLICY

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

In the event the City demonstrates it is necessary to reduce the work force of represented employees, the City agrees to meet-and-consult with the Association at least thirty (30) days prior to any layoff notifications to receive recommendations as to how best to accomplish this process with the least

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impact on represented employees, and to explore alternatives such as reductions in work hours, freezing of step or merit pay increases or similar programs which will result in reducing the City's labor costs.

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

- A. ORDER: The order of lay-off shall be as follows:
 - 1) Temporary (as-needed) employees
 - 2) Probationary employees
 - 3) Permanent employees in inverse order of seniority based on hire date within the Police Department

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

- C. NOTICE: When the City determines that it must implement a reduction in work force, notice to the employee shall be in writing at least thirty (30) days prior to the effective date of the lay-off. The Association shall also receive concurrent notification of lay-off. The notice of lay-off shall contain the following:
 - 1) Reason for lay-off
 - 2) Effective date of lay-off
 - 3) Opportunity to discuss lay-off with a representative of management
 - 4) Conditions governing re-employment
 - 5) Information regarding Unemployment insurance

- D. REASSIGNMENT (BUMPING): Employees identified for lay-off shall have reassignment rights (bumping) to the same classification in a different department or division or to a previously held classification in which the employee attained permanent status based upon seniority with the City of Santa Clara. Employees must exercise these rights by notifying Human Resources, in writing, within seven (7) calendar days after receiving written notification of the lay-off.

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

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

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

RE-EMPLOYMENT/REINSTATEMENT LISTS

The names of regular or probationary employees laid-off according to this policy will be placed on a Re-employment List for each classification for which the employee is eligible in the inverse order of the lay-off. Individuals' names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

In the event an employee accepts reinstatement to a lower class than the one from which laid off, such person's name shall remain on the Re-employment List for reinstatement to the class from which laid off, lateral classes or other higher classes upon which his/her name appears provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent lay-off. Individuals' names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

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

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

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REDUCED WORK WEEK/REDUCED PAY

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

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

VOLUNTARY TIME OFF

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

- A. Approval of a work schedule that does not adversely impact the operations of the department or other employees in the work unit with the approval of the Department Head and the City Manager.
- B. No impact on either sick leave or vacation accrual if sufficient hours are worked in a pay period to entitle the employee to his/her regular accrual rate for either benefit.
- C. No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.

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- D. Voluntary time off may be taken without the employee first using all of his/her accrued Compensatory Time Off (CTO).
- E. Employee may cancel his/her participation in the program with a notice time agreed upon at the time of the granting of the request which will be sufficient to allow the department head to accommodate the request.
- F. Cancellation of the employee's participation in the program will be at the discretion of the Department Head with the approval of the City Manager.

45. REPRESENTATION OF RECRUIT POLICE OFFICER

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

46. DOMESTIC PARTNERS

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

47. ALTERNATE WORK SCHEDULE

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

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

48. FLEXIBLE SPENDING PLAN, INTERNAL REVENUE CODE SECTION 125

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

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly

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participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

49. WORK ACTIONS

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

50. NEXT MEMORANDUM OF UNDERSTANDING PROPOSALS

The Association will submit to the City Manager and the City will present to the Association its proposals for the subsequent MOU for the term commencing at the expiration of this MOU no later than 5:00 p.m., August 29, 2010.

51. EMPLOYEE RIGHTS

All rights, privileges and working conditions enjoyed by the classifications represented herein, as defined in Personnel and Salary Resolution No. 4652, dated May 10, 1983, and City of Santa Clara Resolution No. 2979, entitled "Employer-Employee Relations" dated December, 1972, and other City resolutions, if any, dealing with employee rights and benefits shall not be reduced during the terms of this MOU except in accordance with the provisions of this MOU.

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

52. MANAGEMENT RIGHTS

Subject to State law and the provisions of City of Santa Clara Employer-Employee Relations Resolution, the rights of the City through its Council and Management include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods technology, means,

organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause, establish reasonable employee performance standards including, but not limited to, quality and quantity standards; and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The City Council on its own behalf and on behalf of the City hereby retains and reserves unto itself all rights, power, authority, duty, responsibility and obligations confirmed on and vested in it by the laws and Constitution of the State of California and the United States of America. The exercise of such rights, power, authority, duty, responsibility and obligations by the City Council and the adoption of such rules, regulations, policies as are necessary and as they apply to employees represented by the Santa Clara Police Officers Association, shall be in accord with this MOU to the extent that they do not violate any of the reserved duties, responsibilities and obligations confirmed on and vested in it by the laws, Charter of the City, Constitutions of the State of California, and the United States of America.

53. SCOPE OF THIS MEMORANDUM OF UNDERSTANDING

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

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

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

Nothing in the foregoing shall prevent the parties to this agreement from meeting-

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and-conferring during the term of this MOU in matters of mutual concern. Such meeting-and-conferring shall be established and continued by mutual consent only. If, after meeting and conferring between the management representatives and the majority employee representatives, no agreement has been reached, such items under discussion shall remain unchanged.

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FOR THE CITY OF SANTA CLARA

FOR THE SANTA CLARA POLICE
OFFICERS' ASSOCIATION

APPROVED: _____
JENNIFER SPARACINO, City Manager

APPROVED BY THE CITY COUNCIL ON: _____

ATTEST: _____
RODNEY DIRIDON, JR., City Clerk