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INTERNATIONAL ASSOCIATION OF
6 FIREFIGHTERS, LOCAL 230

ENDORSED

2012 NOV 29 P 2:17

David H. Yermaschi, Clerk of the Superior Court
County of Santa Clara, California
Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10 INTERNATIONAL ASSOCIATION OF
11 FIREFIGHTERS, LOCAL 230,

12 Petitioner,

13 vs.

14 CITY OF SAN JOSE,

15 Respondent.

Case No.

112CV236847

VERIFIED PETITION FOR WRIT OF
MANDATE, PROHIBITION OR
OTHER APPROPRIATE WRIT RELIEF
AND PETITION TO COMPEL
ARBITRATION

[C.C.P. §§ 1085, 1103, 1281.2,
and 1290]

16
17 Petitioner alleges:

18 1. Petitioner International Association of Firefighters, Local 230 ("Union") is,
19 and at all times relevant herein was, a labor organization organized and existing under
20 the laws of the State of California, with its place of business in the County of Santa
21 Clara. The Union is and at all times relevant herein was the exclusive employee
22 representative and bargaining unit of all employees in the classifications of Firefighter,
23 Fire Engineer, Fire Captain, Fire Prevention Inspector and Battalion Chief employed by
24 the City of San Jose pursuant to the Meyers-Milias Brown Act, California Government
25 Code Section 3500 *et seq.*, and San Jose City Charter Section 1111.

26 2. Respondent City of San Jose ("City") is, and at all times relevant herein
27 was a charter city located within the County of Santa Clara and an employer within
28 the meaning of the Meyers-Milias-Brown Act, California Government Code Sections

VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE WRIT RELIEF;
AND PETITION TO COMPEL ARBITRATION; Case No.

1 After reaching a decision, the Arbitration Board shall mail or
2 otherwise deliver a true copy of its decision to the parties.
3 The decision of the Arbitration Board shall not be publicly
4 disclosed and shall not be binding until ten (10) days after it
5 is delivered to the parties. During that ten-day period, the
6 parties may meet privately, attempt to resolve their
7 differences, and by mutual agreement amend or modify any
8 of the decisions of the Arbitration Board. At the conclusion
9 of the ten-day period, which may be extended by mutual
10 agreement between the parties, the decision of the
11 Arbitration Board together with any amendments or
12 modifications agreed to by the parties shall be publicly
13 disclosed and shall be binding upon the parties. The City and
14 the recognized employee organization shall take whatever
15 action is necessary to carry out and effectuate the award.

9 A true and correct copy of the San Jose City Charter Section 1111 is attached
10 hereto as Exhibit 1 and incorporated herein by reference.

11 4. The Union and the City are parties to a written Memorandum of
12 Agreement ("MOA") covering the period from July 1, 2009 through June 30, 2013.
13 Article 20 of the MOA provides for binding arbitration of grievances alleging a
14 violation of the agreement. A true and correct copy of the July 1, 2009 through June
15 30, 2013 Memorandum of Agreement between the City of San Jose and the
16 International Association of Firefighters Local 230 is attached hereto as Exhibit 2 and
17 incorporated herein by reference.

18 5. Retired Firefighters, retired Fire Engineers, retired Fire Captains, retired
19 Fire Prevention Inspectors and retired Battalion Chiefs previously employed by the City
20 (collectively "Retirees") are, and at all times relevant herein have been, third-party
21 beneficiaries of the MOA.

22 6. Article 28.1 of the MOA provides that "Benefits of the Police and Fire
23 Retirement Plan System are to be paid in accordance with the provisions of the Plan
24 and the Memorandum of Agreement on Retirement between the City and [the Union]
25 and the San Jose Police Officers Association." A breach of the Retirement Plan by
26 the City is therefore a breach of the MOA. The Police and Fire Department Retirement
27 Plan ("Retirement Plan") is codified in San Jose Municipal Code, Part 14, Sections
28 3.36.1900 through 3.36.1950. Part 14 of the Retirement Plan, titled Medical

1 Benefits for Certain Persons, provide Retirees with a medical benefit which the City
2 and active employees jointly fund. A true and correct copy of Part 14 of the
3 Retirement Plan is attached hereto as Exhibit 3 and incorporated herein by reference.

4 7. Under the Retirement Plan, section 3.36.1930(B)(2), the Plan must pay a
5 portion of the Retiree's health insurance premium equivalent to the premium for the
6 "lowest cost medical plan." If a Retiree chooses the lowest cost plan, this benefit
7 pays the entire premium. If a Retiree chooses a higher cost plan premium, the plan
8 pays the same benefit and the Retiree pays the difference in cost.

9 8. Under Retirement Plan section 3.36.1930(D), the term "lowest cost
10 medical plan" is defined as a medical plan with the lowest monthly premium "which is
11 an eligible medical plan." An "eligible medical plan" is defined under Retirement Plan
12 section 3.36.1940 as a health insurance plan "which the city has entered into a
13 contract for the provision of [medical benefits] as part of the city's benefits to *city*
14 *employees.*" Because the "lowest cost medical plan" is defined by these two sections
15 as the lowest cost plan offered to active city employees, the Retiree medical insurance
16 benefit must be equal to the premium of the lowest cost medical plan offered to active
17 City employees. If a lower cost plan is offered to only Retirees, it is not a "lowest
18 cost medical plan" under the Retirement Plan.

19 9. Since the inception of a Retiree medical benefit in 1984, Retiree
20 firefighters have been offered the same medical plan choices as active City
21 firefighters. Throughout this period the practice of the parties under all MOA's has
22 been for the City to pay a firefighter Retiree's medical benefit in an amount equal to
23 the premium of the lowest cost medical plan available to active City firefighters.

24 10. On or about August 15, 2012, the Union received notice that the City
25 anticipatorily breached the Retirement Plan and MOA Article 28.1 by announcing its
26 intention to change the benefit for retirees. The City had announced it would offer a
27 lower premium higher deductible medical plan only to retirees and, in the future,
28 would pay a lower retiree medical benefit based on this new plan.

1 11. By letter dated August 22, 2012 from Union Vice President Jeff Welch to
2 Assistant City Manager Alex Gurza, the Union presented the City with a grievance and
3 demand for immediate arbitration pursuant to MOA Article 20.6. A true and correct
4 copy of Mr. Welch's August 22, 2012 letter to Mr. Gurza is attached as hereto Exhibit
5 4 and incorporated herein by reference.

6 12. By letter dated September 10, 2012 from Charles Sakai, counsel to the
7 City, to Christopher Platten, counsel to the Union, the City replied to the Union's
8 demand for arbitration, stating that the Union cannot assert a claim on behalf of the
9 Retirees and therefore the City would not arbitrate the dispute. A true and correct
10 copy of Mr. Sakai's September 10, 2012 letter to Mr. Platten is attached hereto as
11 Exhibit 5 and incorporated herein by reference.

12 13. By letter dated October 3, 2012 from Christopher Platten, counsel to the
13 Union, to Charles Sakai, counsel to the City, the Union responded that it may assert
14 rights guaranteed by the MOA on behalf of Retiree third-party beneficiaries and that
15 the dispute fell under the immediate arbitration provisions of the MOA, Article 20.6.
16 A true and correct copy of Mr. Platten's October 3, 2012 letter to Mr. Sakai is
17 attached hereto as Exhibit 6 and incorporated herein by reference.

18 14. By letter dated October 12, 2012, from Charles Sakai, counsel to the
19 City, to Christopher Platten, counsel to the Union, the City denied the grievance and
20 refused to arbitrate this dispute. A true and correct copy of Mr. Sakai's October 12,
21 2012 letter to Mr. Platten is attached hereto as Exhibit 7 and incorporated herein by
22 reference.

23
24 **PETITION FOR WRIT OF MANDATE, PROHIBITION OR**
25 **OTHER APPROPRIATE WRIT RELIEF**

26 15. Petitioner Union refers to and by reference incorporates the allegations
27 contained in paragraphs 1 through 14 above, as if fully set forth herein.

1 16. Respondent City has the clear, present and mandatory duty imposed
2 upon it by City Charter Section 1111 and Article 20 of the MOA, to submit this
3 dispute to arbitration. The dispute concerns an alleged breach of the MOA, i.e.,
4 Respondent City's attempt to lower its payment of Retiree medical benefits by
5 offering a new lower cost medical plan to Retirees only. Therefore, Respondent City
6 must submit the dispute to arbitration pursuant to the MOA, Article 20, and San Jose
7 City Charter Section 1111.
8

9 17. Petitioner Union has a clear and present right to submit said dispute to
10 arbitration pursuant to City Charter Section 1111 and the MOA on behalf of itself and
11 Retiree third-party beneficiaries.
12

13 18. Petitioner Union has demanded that Respondent City submit the dispute
14 to arbitration but the Respondent City at all times has refused and does refuse to
15 submit the matter to arbitration.
16

17 19. Despite the mandatory duty to submit disputes to final and binding
18 arbitration imposed by the MOA and City Charter as set forth above, Respondent City
19 has wrongfully failed and refused and continues to fail and refuse to perform said
20 duty. Unless compelled by this Court to perform the acts required by law, Respondent
21 City will continue to breach its duty to do so.
22

23 20. The above-described actions of Respondent City are unreasonable and
24 arbitrary. Moreover, the Retirees will suffer immediate harm as of January 1, 2013
25 with the implementation of the new lowest cost plan as the open enrollment is now
26 closed. Retirees will now be paying for services/medical premiums as of January 1,
27 2013 greater than required under the MOA and the Retirement Plan.
28

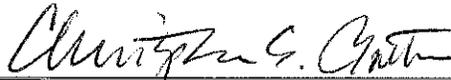
1 §800, Code of Civil Procedure §1021.5, and Code of Civil Procedure §1095, for suit
2 herein incurred.

3 3. For such other and further relief as the Court deems just and
4 proper.

5
6 Dated: November 28, 2012

7 Respectfully submitted,

8 WYLIE, McBRIDE,
9 PLATTEN & RENNER

10 

11 CHRISTOPHER E. PLATTEN

12 Attorneys for Petitioner
13 International Association of Firefighters, Local 230

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VERIFICATION

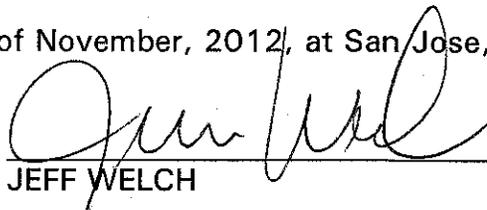
I, Jeff Welch, state as follows:

1. I am the Vice President of the International Association of Firefighters, IAFF Local 230 in the above-entitled action, and am authorized to verify this document in that capacity.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE WRIT RELIEF AND PETITION TO COMPEL ARBITRATION and know the contents thereof. The information contained herein is true of my own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 27 day of November, 2012, at San Jose, California.



JEFF WELCH

Exhibit 1

San Jose City Charter

SECTION 1111. Compulsory Arbitration for Fire and Police Department Employee Disputes.

It is hereby declared to be the policy of the City of San Jose that strikes by firefighting and peace officers are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

If any firefighter or peace officer employed by the City of San Jose willfully engages in a strike against the City, said employee shall be dismissed from his or her employment and may not be reinstated or returned to City employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the City.

The City, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of City employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the City and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.

All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the City and either the fire or police department employee organization shall be submitted to a three-member Board of Arbitrators upon the declaration of an impasse by the City or by the recognized employee organization involved in the dispute.

Representatives designated by the City and representatives of the recognized employee organization involved in the dispute, controversy or grievance shall each select one arbitrator to the Board of Arbitrators within three (3) days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the Arbitration Board shall be selected by agreement between the two arbitrators selected by the City and the employee organization, and shall serve as the neutral arbitrator and Chairman of the Board. In the event that the arbitrators selected by the City and the employee

organization cannot agree upon the selection of the third arbitrator within ten (10) days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven (7) persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the City and the employee organization cannot agree within three (3) days after receipt of such list on one of seven (7) to act as the third arbitrator, they shall alternatively strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the Arbitration Board.

Any arbitration convened pursuant to this section shall be conducted in conformance with, subject, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.

After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The City and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

The expenses of any arbitration convened pursuant to this section, including the fee for the services of the Chairman of the Arbitration Board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

Exhibit 2

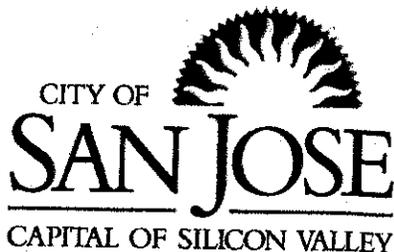
Memorandum of Agreement

City of San José

and

International Association of Firefighters

Local 230



July 1, 2009 – June 30, 2013

EXHIBIT 2

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230
MEMORANDUM OF AGREEMENT
July 1, 2009 – June 30, 2013**

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EXHIBITS

Exhibit I	Salary Schedule Effective June 26, 2011
Exhibit II	Personnel Administrative Manual, Section 8.01 – General Education Reimbursement Personnel Administrative Manual, Section 8.06 - Special Professional and Educational Incentives
Exhibit III	City Policy Manual Section 1.4.2, Substance Abuse Program & Policy

Memorandum of Agreement

Between
City of San José
and
International Association of Firefighters, Local 230

July 1, 2009 – June 30, 2013

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San José, California, this **March 3, 2011**, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Association of Firefighters, Local #230, hereinafter referred to as the "Union." The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown Act."

ARTICLE 1 TERM

- 1.1 This Agreement shall become effective July 1, 2009, except where otherwise provided, and shall remain in effect through June 30, 2013. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.
- 1.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, prior to April 1 preceding the expiration of this Agreement, each party will furnish the other with a list of the issues it wishes to raise in the meet and confer process.
- 1.3 The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

ARTICLE 2 RECOGNITION

- 2.1 Pursuant to Resolution #39367 of the City Council of the City of San José and the provisions of applicable state law, the International Association of Firefighters, Local #230, 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, otherwise known as Unit Two (2). The classifications listed in "Exhibit I" and subsequent additions thereto or deletions there from shall constitute an appropriate unit.
- 2.2 No petition for modification of, or petition for recognition for, the existing representation Unit Two (2), or modification of such unit, shall occur during the term of this Agreement, Except: (1) where an applicable State or Federal law requires such modification, or (2) pursuant to the provisions of the Employer-Employee Relations Resolution #39367, as

amended, but only during the period specifically set forth in the Memorandum of Agreement.

- 2.3 Although the City reserves the right to establish new classifications, transfer employees, assign work and exercise other management rights, the parties agree that they will meet and confer if any such City action materially reduces existing bargaining unit work and, if no agreement is reached, will pursue the remedies provided under the San José City Charter Section 1111.
- 2.4 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. This provision shall not apply to the following:
- a) authority previously granted to City under this Agreement for Civilianization of Functions, which may be exercised by the City without further meeting and conferring.

ARTICLE 3 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding wages, hours and other terms and conditions of employment of the employees represented by the International Association of Firefighters, Local #230.

- 3.1 Whenever a male gender is used in this Agreement it shall be construed to include male and female employees except where inappropriate to do so.

ARTICLE 4 DEFINITION

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

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Wages and Special Adjustments

Effective June 26, 2011, all salary ranges for employees represented by IAFF, Local 230 shall be decreased by approximately 10.0%. This will result in the top and bottom of the range of all classifications represented by IAFF, Local 230 being 10.0% lower. All employees will receive a 10.0% base pay reduction.

The wage increases are approximate in accordance with current City of San José payroll tables. Salary ranges are attached hereto as "Exhibit I".

5.1.1 Terrorism/Anti-Terrorism Pay. Effective July 1, 2006, all persons represented by the IAFF shall receive a wage increase of 2.0% for anti-terrorism training. This shall be pensionable.

5.2 Special Operations.

5.2.1 All employees assigned to the Hazardous Incident Team (HIT) program shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.

5.2.2 Relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$15.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.3 Prior to July 1, 2008, the City will provide Local 230 with the EOPP Section covering the HIT Program amended to include the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the HIT Program will have priority in bidding into the Program and seniority will be used as a tiebreaker;
- A requirement that any individual assigned to the HIT Program will remain with the HIT Program for a period of three (3) years following the completion of any minimum skill and certification requirements;
- A requirement that all personnel assigned to the HIT Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to the HIT Unit to other employees assigned to the Program or with qualified relief pool members who had completed the minimum skill and certification requirements.

The Department will adopt the revised EOPP effective July 1, 2008.

5.2.4 Effective the beginning of the first payroll pay period after the final adopted of the revised EOPP covering the HIT Program, qualified relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.5 On or about January 1, 2008, the City will provide Local 230 with a draft EOPP describing the USAR Program. This draft policy will contain the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the USAR Program will have priority in bidding into the Program and seniority will be used as a tiebreaker.
- A requirement that any individual assigned to the USAR Program will remain with that Company for a period of three (3) years following the completion of any minimum skill and certification requirements.
- A requirement that all personnel assigned to the USAR Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to a USAR Company to other employees assigned to the USAR Program or with qualified relief pool members who have completed the minimum skill and certification requirements.

Local 230 will review and comment on the draft EOPP describing the USAR program and may request bargaining over any matters within the scope of representation (not including items enumerated in this section) on or before March 1, 2008.

- 5.2.6 Effective the later of July 1, 2008 or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, all employees assigned to a USAR Company shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.
- 5.2.7 Effective the later of July 1, 2008, or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, qualified relief personnel who are assigned to a USAR Company during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.
- 5.2.8 Any negotiations over the development of policies pursuant to section 5.2 or any subsection therefore, shall not be subject to arbitration under Charter Section 1111 or any other provision of the MOA.
- 5.3 Emergency Medical Technician (EMT). Each employee who qualifies for certification by Santa Clara County as an Emergency Medical Technician (EMT-NA or EMT-D Non Ambulance or Defibrillation) shall be paid an amount equal to three percent (3.0%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary, commencing with the first full pay period after the Fire Chief files with the Director of Finance a statement that the employee qualifies for such certification.
- 5.3.1 Employees will be required to obtain and maintain certification as an Emergency Medical Technician. The City will continue to provide training.

- 5.4 Paramedics. Each employee licensed by the State of California, accredited by the County of Santa Clara and assigned to front line or support paramedic duty as a paramedic shall be eligible for paramedic premium pay.
- 5.4.1 Paramedic premium pay for front line paramedics shall be an amount equal to twelve percent (12%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.
- 5.4.2 Paramedic premium pay for support paramedics shall be an amount equal to eight percent (8.0%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Employees who are assigned support paramedic duties on or after May 1, 2007, shall receive paramedic premium pay in an amount equal to five percent (5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.
- 5.4.2.1 The City may assign up to a maximum of one-hundred forty-seven (147) support paramedics. If a support paramedic fails to complete the required number of patient contact reports in any given calendar quarter, he or she shall not receive Support Paramedic premium pay until the beginning of the first payroll pay period after he or she completes at least three (3) patient contact reports in a calendar quarter.
- 5.4.3 Paramedic premium pay shall commence with the first full pay period following meeting all of the requirements in section 5.4 above. However, if all requirements are met on the first Sunday or Monday of a pay period, premium pay will begin in that pay period.
- 5.4.4 Paramedic premium pay shall not be considered "compensation" for the purpose of computing retirement benefits in accordance with the provisions of Section 3.36.020(C) of the City of San José Municipal Code. The Union agrees not to propose that paramedic premium pay be included in the definition of "compensation" in the 1996 Police & Fire Retirement Plan negotiations or the 1996 MOA negotiations.
- 5.4.5 If the performance or behavior of a front-line or support paramedic is under investigation by the Fire Department or City Medical Director, the employee shall be removed from paramedic duties during the investigation, however, paramedic premium pay will not be suspended until the investigation is complete. If the investigation results in findings of misconduct, the employee will be removed from the paramedic program. Paramedic premium pay will immediately cease, and premium pay paid from the date the employee was unassigned from the City's paramedic program will be collected from the employee.
- 5.4.6 The Department reserves the right to assign up to one Support Paramedic position to each Company on each shift. The Support Paramedic position will be reserved for the most senior Support Paramedic that bids on a Company where no support paramedic exists on that Company. This process will normally be completed through attrition. However, the Fire Chief retains the right to reassign for the good of the department.

If no Support Paramedic bids for an open Support Paramedic position, the least senior relief Support Paramedic will be assigned to that position.

5.5 Accommodation for Displaced Firefighters Due to Paramedic Program. A one (1) time flat payment of \$500.00 shall be given to each firefighter who is displaced from their engine company due to the expansion of the City's paramedic program.

5.5.1 The one (1) time special accommodation payment shall be made after the paramedic program is fully implemented in July 1996. This one (1) time payment shall not establish a precedent for future shift bids.

5.5.2 Firefighters who are displaced, but agree to a mutual trade back to their original engine company within one (1) year of displacement, are not eligible for the special accommodation payment.

5.5.3 The City shall recover the \$500.00 payment from firefighters who receive the special accommodation payment, but become ineligible under the conditions in sections 5.5.2 above.

5.5.4 In accordance with the provisions of Article 5.5 and sections 5.5.1, 5.5.2, and 5.5.3 above, the City shall extend the one (1) time flat payment of \$500.00 to each firefighter who is displaced from their truck or USAR company due to the continued expansion of the City's paramedic program. This section does not preclude the City from suspending bidding for firefighter positions on the affected truck or USAR company prior to upgrading the company to paramedic level.

5.6 Administrative Assignment Incentive Pay. The City and Union acknowledge that certain employees represented by the Union are needed to staff forty (40) hour per week assignments and that, while assigned to such duties, these employees are limited in their ability to work Minimum Staffing, are not eligible for FLSA overtime based on their regular work schedule and do not receive the work schedule advantages afforded to those employees on twenty four (24) hour shift assignments. Therefore, the City agrees to provide Administrative Assignment Incentive Pay in the amount of \$36.00 per pay period to those employees assigned to forty (40) hour per week positions.

5.7 Bilingual Premium Pay.

5.7.1 Effective June 25, 2000, each full time employee certified Spanish-English or Vietnamese-English bilingual shall be compensated at the rate of \$29.00 per pay period, if he or she meets the following criteria:

5.7.1.1 The employee is certified in English and another language by the Fire Chief and;

5.7.1.2 The employee's duties require the use of the designated language on a regular basis.

5.7.2 The Department of Human Resources or its designee must certify such employees bilingual.

- 5.7.3 If the Fire Chief determines another Non-English language is required in the department, the Fire Chief may recommend that the language be eligible for the bilingual premium pay to the Director of Human Resources. Eligibility and certification of an additional Non-English language shall be in accordance with the above criteria.

ARTICLE 6 INSURANCE BENEFITS

6.1 Health Insurance Coverage.

- 6.1.1 Eligible employees may elect health insurance coverage under one (1) of the available plans for employee only or for employee and dependents.
- 6.1.2 The City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.
- 6.1.3 Effective pay date July 1, 2011, the City pays eighty-five (85%) percent of the cost of the lowest priced plan for the employee or the employee and dependent coverage and the employee pays fifteen (15%) percent of the premium for the lowest priced plan. If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.
- 6.1.4 Co-pays for all available HMO plans shall be as follows:
- a) Office Visit Co-pay shall be increased to \$10.
 - b) Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name.
 - c) Emergency Room Co-pay shall be increased to \$50.
- 6.1.5 Effective pay date July 1, 2011, a \$25 Co-pay plan shall be implemented for all HMO plans, including the following changes:
- a) Office Visit Co-pay shall be increased to \$25
 - b) Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
 - c) Emergency Room Co-pay shall be increased to \$100.
 - d) Inpatient/Outpatient procedure Co-pay shall be increased to \$100.
- 6.1.6 An employee may not be simultaneously covered by the City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

6.2 Dental Insurance.

6.2.1 The City will provide the dental insurance coverage for eligible full-time employees and their dependents in accordance with one (1) of the two (2) available plans. As of the effective date of this agreement, the plans include an indemnity plan, administered by Delta Dental, and a prepaid plan, insured through Dental Benefit Providers. The dental program provided shall include an option for either prepaid or indemnity coverage. The City shall pay whatever cost increases are incurred during the term of this Agreement for any improvements in dental and orthodontia coverage resulting from these discussions.

6.2.1.1 Effective January 1, 2001, each eligible full-time employee and dependents shall receive a lifetime maximum of \$2,000 orthodontia coverage in the Delta Dental Plan.

6.2.1.2 Effective the term of this agreement, all active, eligible full-time employees and their dependents shall receive a lifetime maximum of \$2,000 per eligible full-time employee and their dependents for orthodontic coverage and a maximum for dental of \$1,500 per calendar year.

6.2.1.3 Effective January 1, 2007, 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 (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.

6.2.2 Employees who retire will be eligible to continue dental coverage under the terms defined in the San José Municipal Code Section 3.36, et seq.

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

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

6.3 Life Insurance. The City agrees to provide Life Insurance Coverage in the amount of \$10,000 for each full-time employee who is eligible for and a subscriber to life insurance benefits in accordance with the City's group life insurance policy.

6.3.1 The City further agrees that it will allow employees to purchase additional Life Insurance Coverage at the rate available to the City in amounts equal to one (1) times (up to a maximum value of \$250,000) or two (2) times (up to a maximum value of \$500,000) annual salary.

6.4 Payment-In-Lieu Of Health And/Or Dental Insurance Program.

- 6.4.1 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.
- 6.4.2 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 the employee's health and/or dental insurance at the lowest cost single plan, or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty percent (50%) of that contribution.

Effective pay date July 1, 2011, employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following per pay period.

	Health in-lieu	Dental in-lieu
If eligible for family coverage	\$221.84	\$19.95
If NOT eligible for family coverage	\$89.09	\$19.95

- 6.4.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced work week 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.
- 6.4.4 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 or during the annual open enrollment period. 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.
- 6.4.5 Domestic Partners. Effective October 31, 2001, IAFF members (active employees only) will be eligible to include domestic partners (per the terms and conditions as described on the Affidavit of Domestic Partnership) as dependents for benefits enrollment.
- 6.4.6 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.
- 6.4.7 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.

- 6.4.7.1 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.
- 6.4.7.2 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 (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

ARTICLE 7 EDUCATIONAL AND PROFESSIONAL INCENTIVES

- 7.1 Tuition Assistance. The Tuition Assistance policy as provided in Section 8.01 (revised July 1, 1988) of the Personnel Administrative Manual of the City of San José shall be continued during the term of this Memorandum of Agreement. In no event shall tuition received from this program plus reimbursement from other educational incentive programs exceed the total cost of tuition and books.
- 7.2 Educational Incentive Plan. Exclusive of, and in addition to 7.1 above, the Firefighters' Educational Incentive Bonus Plan, as provided in Section 8.06 of the Personnel Administrative Manual (rev. September 4, 1985) of the City of San José, and attached hereto as "Exhibit V", shall be continued during the term of this Memorandum of Agreement.
- 7.2.1 Department Educational Incentive Program. During the term of this Agreement, the parties agree to refer to a Labor-Management Committee the issue of a new Educational Incentive Program for bargaining unit members. Such Committee shall consider eligibility criteria for the incentive, tuition reimbursement, cost reimbursement and similar matters. Pending completion of such review and mutual agreement on a new program, the current program shall continue in effect.
- 7.2.2 Paramedic Continuing Education Classes. Continuing Education classes required to maintain licensing and accreditation for employees assigned to the City's paramedic program shall be paid for by the City. The City will attempt to schedule continuing education classes during on-duty hours. However, if a front-line or support paramedic attends a required continuing education class during off-duty hours, the employee shall be compensated at the appropriate rate. All overtime hours are subject to provisions outlined in Article 14, Hours of Work and Overtime.
- 7.3 Associate Degree in Fire Science. Each employee who has been awarded an Associate of Arts degree in Fire Science or an Associate of Science degree in Fire Science by an accredited college or university and meets any other requirements of this agreement, shall be paid, for each biweekly pay period for which the employee is entitled to receive a salary, the amount of \$35.00 in addition to the salary established for the class to which

the employee is assigned from and after the beginning of the pay period following the date on which proof is filed with the Director of Finance that the employee has been awarded such degree. No employee shall be entitled to receive payment for more than one (1) such degree.

- 7.4 Firefighter Apprenticeship. During the term of this Agreement, as long as the City and the Union subscribe to a Subscription Agreement with the California Firefighter Joint Apprenticeship Committee and all applicable rules thereto, the Subscription Agreement, its terms and all rules and regulations applicable thereto will be expressly incorporated into this Agreement and made a part hereof.

ARTICLE 8 UNIFORM ALLOWANCE

- 8.1 An annual Uniform Allowance not to exceed \$495.00 shall be paid to each sworn person who holds a position within the classifications listed below.

2314	Battalion Chief	3333	Fire Master Mechanic
2313	Fire Captain	2326	Fire Prevention Inspector
3332	Assistant Fire Master Mechanic	2312	Fire Engineer
2310	Fire Fighter Recruit	2311	Fire Fighter
2328	Arson Investigator		

For calendar year 2011, the uniform allowance shall be paid in January 2012.

If an employee entitled to uniform allowance has less than two thousand eight hundred eighty (2,880) paid hours in the prior year, then uniform allowance will be reduced in the proportion that the employee's unpaid hours bear to two thousand eight hundred eighty (2,880) or equivalent conversion time for personnel on a forty (40) hour schedule.

- 8.2 Effective the first pay period of payroll calendar year 2012, payment shall be made during the first two pay periods of each month, in the amount of \$20.62 per biweekly pay period. If an eligible employee is on unpaid leave for a period of one (1) full pay period or more, the employee will not receive uniform allowance pay for that period.

ARTICLE 9 WORKING IN A HIGHER CLASSIFICATION

- 9.1 Upon specific assignment by the Department Head, or a designated representative, an employee may be required to perform the duties of a higher classification. Such assignments shall be made only to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee. Such assignments shall not be made to vacant positions except in accordance with the rules pertaining to Temporary or Provisional appointments.
- 9.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) higher in the salary range schedule than the rate received by the employee in the employee's present class, provided, however, that such compensation shall not be paid unless the employee has completed ten (10) or more hours in a shift or

ten (10) or more hours in two (2) consecutive shifts in the said higher classification and provided that the employee assigned to a forty (40) hour work week has completed at least one-half (1/2) day in said higher classification.

ARTICLE 10 CALL BACK PAY AND STANDBY PAY

- 10.1 Any employee who is called back to work after the employee has worked their scheduled shift and has departed from their place of employment shall be credited with overtime for the time worked, or for three (3) hours at the appropriate rate of compensation, whichever is greater. An employee called back to duty shall be entitled to the three (3) hour minimum call back compensation only once per workday; for subsequent call backs during the same day, the employee shall be credited with the time worked or for one-half (1/2) hours at the appropriate rate, whichever is greater.

Time worked for minimum staffing and call back purposes shall begin when an employee arrives at the work site. Employees shall be allowed one and one half (1.5) hours to arrive at the work site after receiving the call to report to duty.

- 10.2 Employees who are required to perform standby duty shall be credited with two (2) hours compensation at the appropriate rate for such standby duty performed on a regularly assigned work day and three (3) hours compensation at the appropriate rate for such standby duty assigned on regularly scheduled days off. When an employee assigned such standby duty is called back, the employee shall be entitled to the compensation provided by Section 10.1 only, and to no compensation pursuant to this Section 10.2.

ARTICLE 11 WITNESS LEAVE

- 11.1 Each employee of the City who is required, under subpoena sought by the City or other directive of the City, to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any arbitration, administrative hearing or case or proceeding in any court of this State or of the United States of America, shall receive their regular salary during the time of service as a witness under subpoena, less any and all witness fees which the employee may receive thereafter.
- 11.2 Each employee of the City who is called from off-duty status to testify in an arbitration, administrative hearing or in court, under subpoena sought by the City or other directive of the City on any subject connected with their employment, shall be credited with overtime for the time spent by the employee in such arbitration, administrative hearing or court, or for three (3) hours, whichever is greater, less any and all witness fees which the employee may receive thereafter.
- 11.3 Upon service of subpoena, an employee shall immediately advise the Department Head or supervisor thereof, and of the time when the employee is required to appear in court in response thereto.

ARTICLE 12 JURY DUTY

- 12.1 Each full-time employee who is required to take time off from duty to serve as a juror in any court of this State, or of the United States of America shall receive the regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:
- 12.2 Employees assigned to other than a twenty-four (24) hour shift.
- 12.2.1 In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives the full day's pay, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.
- 12.2.2 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.
- 12.2.3 In those cases in which the employee is not released by the court until after 1:00 p.m., the employee need not return to work. The employee receives the full day's pay, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.
- 12.3 Employees assigned to a twenty-four (24) hour shift.
- 12.3.1 Employees who are assigned to work a twenty-four (24) hour shift and who serve on a jury on their assigned work day, shall return to their assigned station upon completion of such jury service. In the event such employee is required to report for jury service on the following day, the employee will be released from their assigned work shift at 9:00 p.m. The employee shall notify their immediate supervisor or battalion chief of this jury service requirement. Such time off will be considered time worked. Jury service is defined to include a day in which an employee must report to a court of law for jury selection or voir dire. Notwithstanding any other provisions in this agreement or the OAG to the contrary, the City will not be required to minimum staff for positions, other than front-line paramedic positions, vacated at 9:00 P.M.
- 12.3.1.1 Support paramedics will be utilized first to fill the vacancy. If a support paramedic is unavailable, the Fire department will use minimum staffing.
- 12.3.2 In the event that the employee does not return to their regularly assigned shift after release by the court, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.
- 12.4 Absences of Employees Assigned To Front-Line Paramedic Duty. All absences of front-line paramedics due to jury duty shall be filled.

ARTICLE 13 USE OF PRIVATE AUTOMOBILE

- 13.1 Each employee of the City who is authorized by the City Manager to use their private automobile in the performance of the duties of their position, shall be entitled to receive and shall be paid as a travel allowance for such use of their private automobile a "mileage reimbursement rate" consistent with the City's rate.
- 13.2 Employees shall not repair private vehicles while on duty.
- 13.3 Employees required to use a private vehicle, as provided in Section 13.1 above, who may suffer any loss to the vehicle while being operated while the employee is on duty and such loss is covered by the employee's collision insurance shall be reimbursed for any deductible provided by the insurance, but such reimbursement shall not exceed \$1,000 per loss.

ARTICLE 14 HOURS OF WORK AND OVERTIME

- 14.1 The work week shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.
- 14.2 The work day, for pay purposes, shall be a twenty-four (24) hour period commencing with the beginning of the employee's regularly scheduled shift.
- 14.3 Except as provided herein, the normal work schedule shall be forty (40) hours per week consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday. Employees assigned to work twenty-four (24) hour shifts shall be required to work at least an average of fifty-six (56) hours per week. Employees not assigned to work twenty-four (24) hour shifts shall be required to work an average of eighty (80) hours per biweekly pay period, working either eight (8) or nine (9) hours per day, as determined by the Fire Chief. The Fire Chief may assign any employee holding a position in a classification listed in "Exhibit "I to work twenty-four (24) hour shifts whenever in the employer's judgment such is necessary to provide fire suppression or protection services during day and night hours.
- 14.4 Employees assigned to a forty (40) hour week shall be given two (2) consecutive days off even though the days off are in different work weeks, except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 14.5 An employee authorized or required to work overtime who works in excess of eight (8) or nine (9) hours per day, or twenty four (24) hours per day if assigned to a work schedule of fifty six (56) hours per week, shall be compensated at the rate of one and one-half (1.5) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement. No overtime compensation shall be paid for overtime worked which does not exceed thirty (30) minutes per day. Overtime worked which exceeds thirty (30) minutes in any work day shall be computed to the nearest one-half (1/2) hour.

- 14.5.1 An employee assigned to a fifty-six (56) hour work week required to work overtime for work regularly assigned to forty (40) hour work week employees, or for the purpose of back filling an absence created by an employee assigned to a forty (40) hour work week shall be compensated at the overtime rate of one and one-half (1.5) times the employee's 1.4 rate for each overtime hour worked in the forty (40) hour position. In all other instances an employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime at the 1.4 rate. An employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime pay based on conversion to the forty (40) hour work week pay rate when assigned work which is part of the suppression line job function for their rank e.g., QAB's promotional interview boards, suppression line training, EMT proctoring, and special projects or committees.
- 14.6 Overtime worked shall be compensated, at the one and one-half (1.5) rate, by compensatory time. However, the Department Head may authorize payment in lieu of compensatory time where providing such compensatory time would impair departmental operations or efficiency. Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized. An employee who transfers from working a forty (40) hour per week assignment to working twenty-four (24) hour shifts, or vice versa, shall have the employee's unused compensatory time balance converted accordingly by a factor of 1.4.
- 14.7 Compensatory time credited to an employee, and which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 14.7.1 Compensatory time earned while on a forty (40) hour week assignment shall be converted to reflect a fifty-six (56) hour work schedule whenever employee is transferred to a fifty-six (56) hour work schedule. Compensatory time earned while on a fifty-six (56) hour week assignment shall be converted to reflect a forty (40) hour work schedule whenever an employee is transferred to a forty (40) hour work schedule.
- 14.8 Notwithstanding any other provision of this Article 14 to the contrary, the Fire Department may announce its intent to pay employees for accrued compensatory time that is not used as of a date specified by the department. The announcement will also specify a date by which time each affected employee must elect to either:
- 14.8.1 be paid for all accrued, unused compensatory time, OR
- 14.8.2 be paid for all but twenty-four (24) hours of such accrued, unused compensatory time, OR
- 14.8.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Article 14.

Any employee not making an election will retain their compensatory time, subject to other provisions of this Article.

- 14.9 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed as time worked for purposes of this article.
- 14.10 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time earned from and after July 1, 1968, shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the will or the administrator of the estate.
- 14.11 The present fifty-six (56) hour work week and shift schedule shall continue during the term of this Agreement unless mutually changed by the parties.
- 14.12 The City shall provide suitable sanitation facilities for incidents which will last more than four (4) consecutive hours.
- 14.13 All employees assigned to fire line suppression duties shall receive ninety (90) minutes per shift for exercise or work-out needs in accordance with applicable Department policies, provided, however, that this provision shall not entitle any employee to overtime work for the purpose of exercising.
- 14.14 During the term of this Agreement, the City may create one or more new 40-hour per week assignment engine companies. If the City implements a new 40-hour per week engine company, the City will meet and confer with IAFF, Local 230 regarding matters within the scope of representation for each new 40-hour per week company.

ARTICLE 15 DUES DEDUCTION

- 15.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a representation unit represented by the 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.
- 15.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer from time to time by the designated officer of the Union as a regular monthly dues.
- 15.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty-one (21) days following the pay period in which the deductions were made. The City shall deduct and remit without cost to the Union.

- 15.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deductions shall be submitted to the Municipal Employee Relations Officer on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 15.5 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.
- 15.6 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.
- 15.7 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.

ARTICLE 16 MANAGEMENT RIGHTS

- 16.1 Neither party concedes or relinquishes its rights under Charter Section 1111.

Such rights include the ability by the City, for example, to propose a change in terms and conditions of employment not otherwise covered by the Agreement and to seek such change pursuant to Charter Section 1111.

In addition, the City reserves its rights to determine matters outside the scope of representation.

Thus, except to the extent that Section 1111 of the Charter of the City of San José grants rights to the parties herein, and except to the extent that 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 law or other provisions of the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; or reclassify employees; provide merit increases; assign employees overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or any City Department Agency or Unit.

- 16.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after, or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Association of Firefighters, Local No. 230 representing such employee.

16.3 The parties agree that the Routine Operations Policies and Procedures (ROPP) shall contain the following language:

240.1 Transfers and Assignments

A. Authority

1. It is recognized and agreed that the primary obligation of the Department is to provide service of the highest quality to the public. The right to assign personnel is inherent to providing such quality service. Management also recognizes the desire of employees to periodically request changes in work assignments.
2. Officers may refuse any request for transfer of personnel within their command if in their opinion such transfer would reduce efficiency of the Department. Any such transfer and the reasons therefore shall be set forth in writing by the officer refusing the transfer and sent to the Fire Chief, through channels, with a copy delivered to the member requesting the transfer.

If the Chief denies the bid without a recommendation from the Chain of command, the reasons for such denial shall be given in writing to the employee. The employee requesting the transfer which has been refused shall have five (5) days from the receipt of the notice of refusal to file written objections with the Chief.

Move from 240.1(C)1. All transfers of personnel within the SJFD shall be made on the basis of seniority rights, except transfers made by mutual agreement, support paramedics, bi-lingual positions assignments, assignments to the HIT Unit, assignments to a USAR Company, and transfers for the good of the Department.

If the employee wishes to appeal the Chief's denial, the employee may within ten (10) working days, request a review by the City Manager or designee. Such request shall be in writing, and shall include reasons why the employee is not satisfied with the decision rendered. The City Manager has ten (10) working days in which to notify the employee of the results of such review. The decision of the City Manager or designee shall be final and binding.

The City shall amend the ROPP to permit Inspectors in the Fire Prevention Bureau to bid within the Inspector Series by seniority once the position becomes vacant.

The Chief retains the right to deny a bid, change the location of a position, or change an assignment to meet workload demands.

ARTICLE 17 FULL UNDERSTANDING, MODIFICATION AND WAIVER

17.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding,

understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

- 17.2 Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San José Municipal Code, or provided in the Memorandum of Agreement shall be continued without change during the term of this Agreement.
- 17.3 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.

When the Department proposes to change any departmental rule or regulation, it will provide a copy of such change to the Union no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact and proceed under Section 1111 of the City Charter if no agreement is reached.

- 17.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate 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 or negotiate on the subject matter covered herein. This provision shall not apply to matters covered by the provisions entitled "Consolidated Arbitration," in the Grievance Procedure herein.
- 17.5 Both parties agree that, at the request of the other, the first negotiation session shall occur during the first full week of the month of April immediately prior to the contract expiration.

ARTICLE 18 CONCERTED ACTIVITY

- 18.1 Participation by any employee represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San José for employees in this unit, or participation in a strike, work stoppage or slowdown or any other concerted activity which diminishes services provided by employees in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.
- 18.2 If the Union, its officers or its authorized representatives violate provision (18.1) above or tolerate the violation of provision (18.1) 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 (18.1) above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer, 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 20, entitled Grievance Procedure.

ARTICLE 19 SAFETY

- 19.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 19.2 A Safety Committee shall be established and composed of seven (7) members; three (3) members to be designated by the City Manager and three (3) members to be designated by the Union. The seventh (7th) member shall be the City of San José Safety Officer who shall be the Chairman of the Safety Committee. The Safety Committee shall meet not less than once each quarter, or more frequently if requested by the chairman or a majority of the Committee. The Safety Committee shall review the safety standards and procedures for the Fire Department and shall report to the parties at least quarterly with such recommendations as it deems proper. The Department will promptly respond in writing to any formal, written recommendation of the Committee.
- 19.3 Safety issues which employees wish to submit to the Committee must be submitted in writing, via a committee member, on a form provided by the Department. The employee shall indicate the nature of the problem, any known safety standards that are applicable, and a proposed solution to the problem.
- 19.4 The City agrees to establish a separate reporting system for exposures to communicable diseases and hazardous materials. This reporting system will be distinct and in addition to the Employer's Report of Occupational Injury or Illness (Form 5020) currently in use. The reports of exposures to communicable diseases and hazardous materials will be collected through an automated system and will be used to establish a data base reference and to analyze data concerning exposures, recorded on the basis of an individual employee's exposures as well as specific materials to which more than one (1) employee is exposed. The City agrees to provide employees, upon request, with copies of their personal exposure records. The Department shall ensure that data entry shall be timely maintained. Summary data shall be made available to the Union.
- 19.4.1 To replace, through normal attrition, all turnouts so that they meet Project Fires Standards, all harnesses for Self Contained Breathing Apparatus (SCBA) with Kevlar harnesses and all SCBA metal bottles with "light-weight" composite bottles.
- 19.4.2 To continue the Diesel Fume Emission Program, (including purchase of new equipment where appropriate).
- 19.4.3 To test all aerial ladders at least every two (2) years.
- 19.4.4 To comply with all applicable laws covering emergency vehicles.

19.4.5 To continue to make available Hepatitis B vaccinations either through employee health insurance plans or at no additional cost to the employees.

19.4.6 In accordance with existing policy, the City agrees to provide physical examinations for employees under forty-five (45) years of age once (1) every three (3) years. For employees forty-five (45) years of age or older, the City agrees to provide physical examinations once (1) every two (2) years. For employees required to hold a Class A or B drivers license, the City agrees to provide physical examinations as required by law for operators of Fire Service apparatus. Notwithstanding any provision of this section, the City may elect to conduct, or have conducted, physical examinations at other times such as upon return from sick leave or disability leave or upon promotion.

ARTICLE 20 GRIEVANCE PROCEDURE

20.1 Any dispute between the City and an employee, or, between the City and the Union, regarding the interpretation or application of this Memorandum of Agreement shall be considered a grievance. A grievance may be filed by an employee on their own behalf, or by the President of the Union, or designated representative(s).

20.2 Step I.

20.2.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor within fourteen (14) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within seven (7) calendar days after receiving the oral grievance, the immediate supervisor shall give the employee a reply.

20.2.2 If the employee is not satisfied with the reply of the employee's immediate supervisor, the employee may appeal the grievance to Step II.

20.3 Step II.

20.3.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Chief or Assistant Chief within seven (7) calendar days following the receipt of the immediate supervisor's oral reply. The Assistant Chief may refer the grievance to the appropriate supervisor.

20.3.2 The written grievance shall contain a complete statement of the grievance, and alleged facts upon which the grievance is based, the reasons for the appeal, the remedy requested, and the sections of the agreement claimed to have been violated, if any. The grievance shall be signed and dated by the employee.

20.3.3 The Assistant Chief, or appropriate supervisor to whom the grievance has been referred, may arrange a meeting with the employee and appropriate Union representative and attempt to resolve the grievance. In any event the Assistant Chief, or designated representative, shall give a written decision to the

employee within fourteen (14) calendar days following receipt of the written appeal to Step II.

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

20.4 Step III.

20.4.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer within seven (7) calendar days following receipt of the written decision at Step II.

20.4.2 Within fourteen (14) calendar days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Union representative, and the Assistant Chief or the appropriate supervisor to discuss the matter. A written decision shall be given the employee or the appropriate Union representative within seven (7) calendar days following the meeting.

20.4.3 If the grievant is not satisfied with the decision of the Municipal Employee Relations Officer, the appropriate representative of the Union may appeal the grievance to Step IV – Arbitration.

20.5 Step IV - Arbitration.

20.5.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at Step III.

20.5.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator for determination.

20.5.3 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.

20.5.4 Within seven (7) calendar days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.

- 20.5.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written opinion and reasons for the opinion as soon after the hearing as possible. The opinion shall be final and binding on both parties, and shall be limited to the issue, or issues involved.
- 20.5.6 The opinion shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Union.
- 20.5.7 Except as hereinafter provided, 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 schedule, whenever possible, shall be determined in advance of the hearing.
- 20.5.8 Witnesses who are employees and on duty at the time of scheduled appearance shall be released from duty without loss of compensation for the time required to testify. No overtime payments shall be made because of scheduled appearances.
- 20.5.9 Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. One (1) spokesperson shall be permitted to be present without loss of compensation for grievances filed by the Union.
- 20.5.10 Arrangements for release time for grievant's witnesses shall, wherever possible, be made with the Municipal Employee Relations Officer no later than twenty-four (24) hours in advance of the scheduled hearing.
- 20.5.11 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.
- 20.5.12 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties. The parties shall meet at least seven (7) calendar days prior to the arbitration hearing date for the purpose of narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.

20.6 Immediate Arbitration.

- 20.6.1 Any party may waive the grievance procedure time limits specified in this Article and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the Agreement in so short a period of time as to disallow the party from proceeding within the time limits of this Article. However, the method of proceeding to Immediate Arbitration must be done consistent with the following provisions.

- 20.6.2 The arbitration shall take place no earlier than the fifteenth (15th) day following the request by the grieving party for such "Immediate Arbitration," unless otherwise mutually agreed. During the two (2) week period, fourteen (14) calendar days, immediately following the request for Immediate Arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.
- 20.6.3 If the City is the responding party, the Fire Chief and Director of Employee Relations, or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Union representatives, in an attempt to resolve the dispute.
- 20.6.4 Once the request for Immediate Arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two (2) week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two (2) week period.
- 20.6.5 The parties will attempt to have a standing list of available "Immediate Arbitrators," but if no agreement on same is reached, the parties will obtain five (5) arbitrators, by telephone if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two (2) week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.
- 20.6.6 In any such case, the arbitrator selected to decide the dispute or grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in the Article, or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and just manner. However, the arbitrator may 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.
- 20.6.7 Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.
- 20.6.8 The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all possible.

20.7 Consolidated Arbitration.

- 20.7.1 If a matter goes to arbitration, and an arbitrator determines that the dispute in question is not otherwise covered by this Agreement, but would be subject to the provisions of Section 1111 of the Charter of the City of San José, then the same arbitrator serving as the neutral arbitrator and chairperson shall convene a three (3) member Board of Arbitrators and shall have the same authority as if selected as the neutral arbitrator under Charter Section 1111. The non-neutral

members of the Board shall be chosen as provided in Section 1111. The Board shall conduct "mediation/arbitration". The Parties contemplate the sort of "mediation/arbitration" as the process is traditionally used in the San Francisco Bay Area. This process shall constitute issue by issue, last best offer arbitration proceedings as described in Charter Section 1111.

20.7.2 The parties herein contemplate eliminating the additional time and expense that would occur if a separate arbitrator had to be chosen under Section 1111 to hear/resolve the dispute in a separate proceeding.

20.8 Disciplinary Grievances.

20.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters which are cognizable before the Civil Service Commission, including Step Reductions.

Step Reduction. As an alternative to other forms of discipline, the appointing authority may reduce an employee's salary step for a specified period of time. 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 or pursuant to the disciplinary procedure set forth in this Agreement.

20.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.

20.8.3 Letters of reprimand may be appealed under this section only to the City Manager level.

20.8.4 An employee challenging discipline shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil Service Commission. The election of one (1) remedy shall constitute a waiver of the other. Any employee who wishes to preserve the right of appeal to the Commission must comply with the time requirements for filing such appeal as specified in the Civil Service Rules.

20.8.5 An employee appealing to binding arbitration shall do so by filing a written request with the Municipal Employee Relations Officer within twenty (20) days of service upon the employee of the Notice of Discipline on which the discipline is based. The arbitration provisions of the grievance procedure of this Agreement shall apply, including those dealing with time limits, but shall not include the provisions dealing with "Immediate Arbitration".

20.8.6 As otherwise provided in this Agreement, for the disciplinary matter to go to binding arbitration, the Union must agree (i.e., must be the party taking the matter to arbitration).

20.8.7 Notwithstanding the provisions of San José Municipal Code 3.04.1700 D., employees in this unit shall not be eligible to apply for a hearing by the Civil Service Commission regarding performance ratings.

20.9 General Provisions of Grievance Procedure.

- 20.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representatives shall be kept to a reasonable minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.
- 20.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, where provided, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 20.9.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation, except as otherwise provided by law under the Doctrine of Exhaustion of Administrative Remedies, the Union agreeing 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.
- 20.9.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 26, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.
- 20.9.5 Any of the time limits specified in Steps I through III may be extended by written mutual agreement of the parties.
- 20.9.6 No resolution of any grievance, as defined in Article 20, entitled Grievance Procedure, shall be contrary to the provisions of the Memorandum of Agreement. Copies of the resolution of all grievances, including the grievance, shall be sent to the President of the Union.
- 20.9.7 It is understood and agreed that whenever a provision in this Article refers to an employee filing a grievance, the Union may file such grievance either on the employee's behalf or on behalf of the Union. In such event the processing of the grievance shall comply with all other provisions of the Grievance Procedure Article.
- 20.9.8 The Union agrees to provide the City with a list of representatives authorized to file grievances on behalf of the Union. Such list shall be kept current and shall contain no more than six (6) representatives in addition to the President of the Union.
- 20.9.9 If a party petitions to compel arbitration, then the prevailing party in such litigation shall be entitled to reasonable attorney's fees. This provision contemplates the prevailing party being either the petitioner or respondent in

such litigation, including those situations in which the City is represented by the City Attorney's Office.

20.9.10 Nothing in the agreement between the City and the Union shall be construed so as to prevent the Union from working out any arrangement it chooses for the reimbursement or other payment by members of its bargaining unit for the costs of any arbitration proceeding involving a disciplinary grievance. The City shall have no responsibility for collecting such amounts.

20.9.11 Whenever labor/management grievances are resolved either by mutual agreement, Employee Relations Office decision, arbitration or court action, the City will transmit information regarding such resolution to Unit Commanders it selects. The Organization may notify those of its members it chooses through present means of communication.

ARTICLE 21 LEAVES OF ABSENCE

- 21.1 The appointing authority, or 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 the approval of the appointing authority, or designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 21.2 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 as 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 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.
- 21.3 For purposes of this Article, seniority shall be defined in accordance with Subsection 22.4.1 of Article 22, entitled Layoff.
- 21.4 Any employee who is absent without notification to the employee's Department Head, or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary resignation unless the failure to report is due to extenuating circumstances beyond the control of the employee.

1985, in lieu of any other holidays (excepting any other days proclaimed or designated by the Council as holidays for which full-time employees will be entitled to holiday leave), 4.7385 hours of time off for each biweekly pay period after July 14, 1985, during which the employee is assigned to twenty-four (24) hour shifts or 3.3847 hours of time off from duty for each biweekly pay period after July 14, 1985, during which such employee is not assigned to twenty-four (24) hour shifts, but exclusive of any such biweekly pay period spent by the employee on unpaid leave. Said holiday benefit shall be given to each such officer or employee at a time to be determined by the City Manager, in their discretion, or by the Fire Chief with the approval of the City Manager, either before or after the biweekly pay period as provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the biweekly pay period for which such benefit is given, nor later than twenty-six (26) biweekly pay periods immediately following the biweekly pay period for which such benefit is given.

- 24.2 If, at any time on or before the expiration of twenty-six (26) biweekly pay periods immediately following the biweekly pay period during and for which any full-time employee becomes entitled to time off duty as a holiday benefit under the provisions of Section 24.1 of this Article, the City Manager shall find or determine that to give any such employee such benefit to which they may be entitled under Section 24.1 for any such pay period would seriously impair the efficiency of the Fire Department, the City Manager may order that such employee shall receive and be given, and in such event said employee shall thereupon be entitled to receive and shall be given in lieu of the holiday benefit to which the employee would otherwise be entitled for any biweekly pay period under the provisions of Section 24.1, such full-time employee shall be given as extra holiday compensation 5.623% of their regular salary during said biweekly pay period of full-time employment.
- 24.3 For the purpose of computing retirement benefits for employees covered by this Agreement, and in accordance with the provisions of 3.36.020 of the San José Municipal Code, the term "compensation" as it is used to determine retirement benefits shall be defined to include holiday pay.

ARTICLE 25 VACATIONS

25.1 Employees shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or amendments thereto. Accordingly, a full-time employee shall be entitled to accrue vacation leave in the amount specified in subsections 25.1.1 and 25.1.2 for each cycle of twenty six (26) full biweekly pay periods immediately preceding December 31, or portion thereof, in each year of employment.

25.1.1 Employees assigned to a forty (40) hour work week:

Years of Service	Hours of Vacation per twenty six (26) pay periods cycle
First 5 years	80 hours
6th - 10th year	120 hours
11th - 12th year	136 hours
13th - 14th year	152 hours

15th year or more 200 hours

25.1.2 Employees assigned to fifty-six (56) hour work week:

Years of Service	Hours of Vacation per twenty six (26) pay periods cycle
First 5 years	120 hours (five full shifts)
6th - 10th year	168 hours (seven full shifts)
11th - 12th year	192 hours (eight full shifts)
13th - 14th year	216 hours (nine full shifts)
15th year or more	288 hours (twelve full shifts)

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

25.3 Vacation Pay. If in the judgment of the City Manager it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, the employer may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to the employee's regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, the employee may elect, in writing, filed with the Director of Human Resources, to carry over such leave to the subsequent cycle of twenty six (26) biweekly pay periods.

25.4 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week or the beginning of a cycle of twenty four (24) hour shifts, unless the employee elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the relative length of time served by each employee in the classification in which the employee is employed in a department of the City Government, and by the length of time during which such employee has worked on any shift if more than one (1) shift is worked by employees in such classification.

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

Prior period of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation even though such employee may, upon

satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

25.6 Vacation Relief Personnel. The City agrees to increase the number of firefighter classification vacation relief personnel by two (2) from four (4) to six (6) from May 1 through October 31 of each calendar year.

25.7 Vacation Leave.

Effective the first payperiod of payroll calendar year 2009, employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.

Effective the first payperiod of payroll calendar year 2009, any employee who is already above two times their annual vacation accrual rate, will cease accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

25.8 Vacation Scheduling. Any employee who is prevented from taking regularly scheduled vacation as a result of disability leave or sick leave, shall take vacation as follows:

1. If the employee returns from disability leave or such leave in the last three (3) months of the calendar year, or, if the missed vacation occurs in the last three (3) months of the calendar year, then the employee will be given the option of carrying over the missed vacation hours to the next calendar year or taking such vacation under the conditions set forth below.
2. If the employee returns from such leave during the first nine (9) months of the calendar year, then the employee shall be required to reschedule the missed vacation during the remainder of such calendar year. Such rescheduling shall occur on any shift selected by the employee, even a shift on which the maximum allowable number of employees in the same classification have already scheduled vacation; provided, the employee rescheduling missed vacation shall not be permitted to select a shift if the employee's selection would cause the total number of employees in the classification to exceed the maximum allowable number by more than one (1) employee.
3. Re-selection of missed vacation shall be permitted on a first-come, first-served basis.
4. For personnel assigned to a non-suppression work function, their selection of vacation is subject to approval by the Bureau Director and may be denied for reasons of excessive workload.

25.9 Effective the first payperiod of payroll calendar year 2009, employees will only be allowed to use vacation that has already been accrued.

ARTICLE 26 SICK LEAVE

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

26.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04688 for employees assigned to twenty-four (24) hour shifts, or a factor of 0.04616 for other eligible employees. Only paid leave for holidays, vacation, disability, compensatory time off, or other paid leave shall be considered as time worked for purposes of this section.

26.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related, illness or injury; routine medical or dental appointments; illness in the immediate family as defined herein, or absence of an eligible female employee due to illness, injury or disability related to pregnancy or childbirth. Immediate family shall be limited to the eligible employee's mother, father, spouse, domestic partner registered with the Human Resources Department, child, stepfather, stepmother, or stepchild.

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

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

26.1.4 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.

26.1.5 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 27 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 27, and who is entitled to Workers' Compensation temporary disability benefits, other than the Workers' Compensation temporary disability benefits provided by Division I of the Labor Code of the State of California, 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.

- 26.1.6 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.
 - 26.1.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee, or someone on their behalf, notifies the employee's immediate superior or department head of their intent to take such sick leave, and of the reasons therefore, as soon as possible but not less than one (1) hour prior to the commencement of the employee's scheduled work day. However, the City Manager may waive the requirements of such notice upon presentation of a reasonable excuse of such employee.
 - 26.1.8 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
 - 26.1.9 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, or on account of routine medical or dental appointment needs of the employee, in all situations where such employee is not entitled to sick leave with pay. No single period of sick leave without pay shall exceed twelve (12) months in any twenty-four (24) month period, and any full-time employee who is unable to return to work after being absent therefrom for twelve (12) months in any twenty-four (24) month period on unpaid sick leave shall be considered to have voluntarily resigned.
- 26.2 Sick Leave Payoff. There shall be paid to each full-time employee of the City:
- 26.2.1 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of any applicable retirement plan of the City except Chapter 3.28 of Title III, of the San José Municipal Code, other than a full-time employee who retires or becomes eligible for retirement allowances pursuant to the provisions of Section 3.24.510, Section 3.32.370, or Section 3.36.1630 of the San José Municipal Code; or
 - 26.2.2 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of Chapter 3.28 of Title III of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) years or twenty (20) years of service, whichever is applicable, in said retirement plan; or
 - 26.2.3 Whose service with the City is terminated, and who, subsequent to such termination of service, qualifies for retirement and retires pursuant to the provisions of said Section 3.24.510, Section 3.32.370 or Section 3.36.1630, of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) or twenty (20) years of service in the applicable retirement plan; or

- 26.2.4 To the estate of any full-time employee who had terminated service with the City but had retained rights in a retirement system according to provisions in the SJMC, and dies (on or after July 10, 1977) prior to becoming as cited under provisions of the SJMC, and has at the time of death credit for at least twenty (20) years of service in the applicable retirement plan.
- 26.2.5 To the estate of any full-time employee of the City of San José who dies prior to such retirement, even though the employee is not credited with at least fifteen (15) or twenty (20) years of service in any applicable retirement plan, as additional compensation for not having used all or some of their accumulated sick leave with pay, such compensation as shall equal the greatest of the following:
- (a) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit less than four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty four (24) hour shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to fifty percent (50%) of the employee's hourly rate of pay at the time of death, retirement, or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
 - (b) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit, at least four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to sixty percent (60%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
 - (c) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit at least eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eighty (1,680) for any full-time employee who is assigned to twenty-four (24) hours shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to eighty percent (80%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
 - (d) If a full-time employee, at the time of service retirement or death, has accumulated and has to their credit at least one-thousand two-hundred

one (1,201) hours, or one-thousand six-hundred eighty (1,680) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, or greater of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to one-hundred percent (100%) of the employee's hourly rate of pay at the time of death or service, whichever is earlier, multiplied by the total number of accumulated and unused hours of sick leave as of the date of death or retirement. If after retirement the employee switches from service to disability retirement, the employee shall repay to the City the difference in sick leave payout between service and disability retirement (e.g. one-hundred percent (100%) service, eighty percent (80%) disability).

26.2.6 For purposes of payment of accumulated sick leave as provided in this Article, sick leave accumulated during prior periods of employment shall be credited to the employee. Such previously accumulated sick leave shall be credited to the employee for use during such employee's current employment.

26.2.7 For purposes of the sick leave payoff benefit, service with the Central Fire District will be counted as years of service for the City for former employees of the Central Fire District who transferred to the City under the consolidation.

ARTICLE 27 DISABILITY LEAVE

27.1 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City who is required to be absent from active service for the City as the result of injury arising out of and in the course of their full-time employment with the City, shall be deemed to be on disability leave of absence from active City service from the time the employee is required, because of such injury to be absent from active City service, to the time the employee is no longer required by such injury to be absent from such active service or until their employment with the City ends or is terminated, whichever is the earlier time, and, in such situation, such full-time City employee shall be entitled to receive, and shall be paid, in lieu of the employee's regular salary, and in addition to such temporary disability compensation as they may be entitled to under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, such temporary disability leave compensation, if any, as the employee may be entitled to under the following provisions of this Article for the periods of time hereinafter specified in this Article.

27.2 Anything elsewhere to the contrary notwithstanding, no full-time employee of the City who is required to be absent from active service for the City as a result of any injury shall be deemed to be on disability leave of absence, or be entitled to any compensation or other benefits under the provisions of this Article unless such employee, as a result and because of such injury and absence from active City service, is entitled to temporary disability compensation from the City under and by virtue of the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.

27.3 If the Workers' Compensation Appeals Board of the State of California, or any judicial court having jurisdiction over the matter, should determine that such employee is not entitled to temporary disability compensation from the City under said provisions of said

Labor Code; said employee shall not be entitled to any benefits under the provisions of this Article, and any moneys theretofore paid to the employee under the provisions of this Article shall be deemed to have been paid in error, and the City shall be entitled to recover the same.

- 27.4 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article if the injury as a result of which the employee is required to be absent from active City service results from any work voluntarily undertaken by such employee which they had been prohibited from engaging in prior to the date of such injury by an examining physician of the City.
- 27.5 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article for any period of absence from active City service if the employee is offered alternative employment during such period of absence in a class of employment identical or substantially similar to that in which the employee worked immediately prior to the time the employee was required to be absent, and if, in addition, such employee was physically qualified for such alternative employment and refused or failed to accept such employment.
- 27.6 In no event shall any compensation or other benefits be payable under the provisions of this Article to any employee, because of absence resulting from an injury, for any period of time greater than the shortest of any of the following periods of time, to wit: (i) the time during which the employee is required to be absent from active City service as a result of injury arising out of and in the course of their full-time employment with the City, (ii) the period of time for which temporary disability compensation is payable to the employee under the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California, (iii) one (1) year. Also, no employee shall be entitled to any benefits or compensation under the provisions of this Article because of absence resulting from an injury for any time after the expiration of five (5) years immediately following the date of such injury.
- 27.7 Unless and except to the extent otherwise expressly provided in this Article, an employee who becomes entitled, because of disability, to any leave of absence, compensation or other benefits under the provisions of this Article, shall not be entitled to any salary, leave of absence or other compensation under the provisions of any other Section or Sections of this Article, or under the provisions of Chapter 3.12 of Title III of the San José Municipal Code, or under the provisions of any other ordinance or resolution, for or because of the employee's injury or absence from active service, the leave, compensation and benefits provided by this Article for disability of such employee, being in lieu of, and not in addition to, salary, leaves of absence, or other compensation or benefits to which the employee might otherwise become eligible under the provisions of any other Section of this Article, or under the provisions of Chapter 3.12 of Title III of the San José Municipal Code.
- 27.8 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City on disability leave of absence shall be entitled to the following temporary disability leave compensation, to wit:

- 27.8.1 For the first three-hundred sixty five (365) days of the employee's disability leave of absence, or for such portion of such three-hundred sixty five (365) days as the employee may be absent on such leave where the employee is absent for less than the full term of such three-hundred sixty five (365) days, the employee shall be entitled to an amount of money which when added to the temporary disability compensation paid or payable to the employee for such period of time under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, will equal one-hundred percent (100%) of what would have been the employee's regular salary for such period if the employee was in active service rather than on disability leave of absence.
- 27.8.2 For any period of disability leave of absence following the expiration of the above-mentioned periods of time, the employee shall be entitled to no compensation whatsoever.
- 27.9 No employee shall be entitled to any compensation or other benefits under the provisions of this Article unless the Director of Finance shall have determined that such employee is entitled to such compensation or benefits.
- 27.9.1 The Director of Finance in order to properly make any determination respecting an employee's claim to benefits hereunder, may require the employee to present evidence proving that such employee is entitled to the benefits claimed, including, but not limited to, proof of the injury, proof that it arose out of and in the course of the employee's employment with the City, proof of the disability and of its duration, and proof of any other relevant matters. Also, said Director may require the employee to submit to medical and physical examinations by physicians selected by said Director.
- 27.9.2 The Director of Finance shall be notified of approved or disapproved claims for disability leave compensation.
- 27.9.3 The Director of Finance shall not make any determination holding that an employee is entitled to any compensation or leave of absence hereunder for any period of time because of an injury if the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, shall have already determined that such employee is not entitled because of such injury to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for said period of time, under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California. Any such determination by said Director in violation of this paragraph shall be null and void.
- 27.9.4 Also, in the event the Director of Finance should determine that an employee is entitled to any compensation or leave of absence hereunder for any period of time because of an injury, and, subsequently, the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, should determine that the employee is not entitled, because of such injury, to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for such period of time, under the Workers'

Compensation provisions of Division I or Division 4 of said Labor Code, then in that event, the determination of said Director shall become null and void and City shall be entitled to reimbursement for all moneys, if any, theretofore, paid by the City to said employee for or because of said injury and absence.

- 27.9.5 For personnel on work-related disability, all communications to the employee's physician shall be coordinated through either the Risk Manager's claim representative or the City's physician.

ARTICLE 28 RETIREMENT

- 28.1 Benefits of the Police and Fire Retirement Plan System are to be paid in accordance with the provisions of the Plan and the Memorandum of Agreement on Retirement Between the City and the Union and the San José Police Officers' Association.
- 28.2 No staff services from the City Attorney's Office will be charged to the Police and Fire Retirement Fund.
- 28.3 For purposes of computing retirement benefits for employees covered by this Agreement, and in accordance with the provisions of Chapter 3.36 of the San José Municipal Code, the term "compensation," "final compensation" or "final average salary" as such terms are used to determine retirement benefits shall be defined to include any EMT compensation and holiday pay.
- 28.4 The City shall provide, at no cost to the employees or the Union, an annual pre-retirement advisory program covering benefits and rights of retired employees. The program shall include retiree tax information, workers' compensation and rehabilitation benefits and available alternatives to retirement.
- 28.5 Permanent employees represented by the Union who transfer to Police service shall remain in the Police and Fire Retirement plan while they are in the Police Academy.
- 28.6 The current formula for calculating retirement benefits is 2 ½% percent of the final compensation for each year of service with the City up to 20 years, plus 3% of final compensation for each year of service with the City between 21 and 25 years, and 4% from 26-30 years subject to a maximum of 85%.
- Effective July 1, 2008, the benefit formula will be changed to 3% of final compensation for each year of service once an employee completes twenty (20) years of service to a maximum of 90%.
- 28.7 Effective July 1, 2008, the spousal survivorship benefit shall be equal to fifty percent (50%) of the member benefit up to a maximum of forty-five percent (45%) of the member's final average salary.
- 28.8 Effective as soon as practicable after the Retirement Board's actuary determines that there is no impact to the City or the Police and Fire Department Retirement Plan and following adoption of the implementing ordinance, the following employee paid plan changes will be in effect for all employees represented by the organization;

1. Elimination of the thirty (30)-day window for the redeposit of withdrawn contributions, allowing for redeposit at anytime for active employees. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.
2. Elimination of the thirty (30)-day window for the purchase of service credit for previous Federated Retirement service credit, allowing for purchase at any time for active employees. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.
3. The ability to purchase service credit for time on unpaid leave of absence. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.

ARTICLE 29 RETIREE HEALTHCARE FUNDING

- 29.1 The City and the Union agree to transition from the current partial pre-funding of fire retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the fire retiree healthcare benefits plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 26, 2011. 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, 2041 (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 3.36.575 (C) (1) and (2) 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 three-to-one. 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.
- 29.2 The City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.
- 29.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Police and Fire Department Retirement Plan 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 in 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 26, 2011. 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 Union agree that the Plan member cash contribution rate shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 1.35% 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 5.25% of pensionable pay.

- 29.4 If, at any time the calculated Plan member cash retiree healthcare contributions exceed 10% of pensionable pay or the calculated City cash retiree healthcare contributions exceed 11% of pensionable pay for the City (excluding implicit subsidy), the parties shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for Plan members or 11% of pensionable pay for the City in order to fund the full ARC. Such discussions shall include alternatives to reduce retiree healthcare costs. If the parties are unable to agree on the manner in which to fully fund the retiree healthcare ARC (contributions exceeding 10% of pensionable pay for Plan members or 11% of pensionable pay for the City, excluding implicit subsidy), applicable impasse dispute resolution procedures shall apply.

Nothing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare.

- 29.5 The City will establish a qualified trust ("Trust") by July 1, 2011.

ARTICLE 30 MISCELLANEOUS

- 30.1 Pay Checks. Paychecks will be delivered on payday to the station to which an employee is normally assigned. Any paycheck not claimed by an employee before Monday, ten (10) days following payday, will be returned to the Fire Department Administration Office. Employees may, at their option, file with the Finance Department appropriate written instructions for the automatic deposit of their paychecks, which instructions may be amended at such times as the Finance Director determines are reasonable.
- 30.2 Door Locks. Doors on all firehouses shall be fitted with locks and the City shall make every reasonable effort to maintain the locks in proper operating order. Apparatus doors may be closed and locked by employees responding to an alarm.
- 30.3 Voter Registration and Bicycle Licensing. Voter registration shall be restricted to the hours between 9:00 a.m. and 7:00 p.m. Bicycle licensing shall be restricted to the hours between 9:00 a.m. and 7:00 p.m. on Saturdays and Sundays.
- 30.4 Television Training. In each station where the employees' television set is used to view televised training programs sponsored by the Department, the City shall lease one (1) descrambler from the current cable provider and provide it for use on that set. The purpose of this descrambler is to facilitate transmission of training programs and the City is under no obligation to guarantee or pay any fee for other services, which may be available to users of the descrambler. Additionally, the City agrees to pay one-half (1/2) of the cost of maintenance for television sets used for such training purposes, provided, however, that the City will pay no more than \$100.00 per fiscal year for any single station. If the employees of a station purchase a new television set and that set is to be used for training purposes, any unused portion of the \$100.00 maximum station expenditure may be applied toward the purchase of that set, with the understanding that

no additional funds will be available to that station for maintenance or purchase for the remainder of the fiscal year.

- 30.5 Copies of Agreement for Distribution. The City will print five-hundred (500) hard copies for use by the City and IAFF, Local 230.

ARTICLE 31 MAINTENANCE OF MEMBERSHIP

- 31.1 Except as otherwise provided herein, each employee who, on July 1, 2009, is a member in good standing of the Union shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Union as a condition of retaining membership.
- 31.2 Any employee who, on July 1, 2009, is not a member of the Union nor any person who becomes an employee after July 1, 2009, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.
- 31.3 Any employee who, on July 1, 2009, was a member of the Union, and any employee who subsequently becomes a member may, during the period beginning May 1, 2010 through May 31, 2010; and May 1, 2011 through May 31, 2011 resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the City's Municipal Employee Relations Officer with a copy to the Union.
- 31.4 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

ARTICLE 32 BEREAVEMENT LEAVE

- 32.1 Each full-time employee shall be granted bereavement leave with full pay for a period of four (4) days in the case of employees on other than twenty four (24) hour shifts or two (2) work shifts, for personnel assigned to work twenty four (24) hour shifts, to attend 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 the 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 regarding the waivers shall be final with no process for further appeal:

- a) Parent/Step Parents
- b) Spouse
- c) Child/Step-Child
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparents/Step-Grandparents
- f) Great Grandparents/Step-Great Grandparents

- g) Grandchildren
- h) Domestic Partner
- i) Sister in-law/Brother in-law/Daughter in-law/Son in-law

32.1.1 A domestic partner, as referenced in Section 32.1, must be the domestic partner registered with the Department of Human Resources.

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

ARTICLE 33 AUTHORIZED REPRESENTATIVES

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

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

33.1.2 The Union's principal authorized agent shall be the President of International Association of Firefighters, Local #230, or a duly authorized representative.

ARTICLE 34 MINIMUM STAFFING

34.1 The parties agree that such staffing shall be accomplished pursuant to the Minimum Staffing procedures set forth in the OAG. It is further agreed that such procedures will be revised by the parties in order to equalize minimum staffing opportunities consistent with this Agreement.

34.2 The City agrees to provide the following staffing levels at all times:

34.2.1 Each single piece Engine Company shall have a minimum of four (4) line personnel.

34.2.2 Each Engine Company with a hose wagon shall have a minimum of five (5) line personnel.

34.2.3 Each three (3) piece Engine company shall have a minimum of six (6) line personnel.

34.2.4 Each Truck Company or Urban Search and Rescue vehicle shall have a minimum of four (4) line personnel.

34.2.5 Each Battalion shall have a minimum of one (1) battalion chief or person acting in this capacity per shift.

34.2.6 At the discretion of the Fire Chief or designee, and notwithstanding the above provisions, the following vacancies need not be filled:

34.2.6.1 A total of ten (10) employees, absent for twelve (12) hours or less, for reasons related to duties or training within their scope of work, however, no more than two (2) employees may be absent from the same battalion at one time.

34.2.6.2 In addition to section 34.2.6.1, a total of three (3) employees, absent for twelve (12) hours or less, who are Executive Board members or designees, for union business.

34.2.6.3 In addition to sections 34.2.6.1 and 34.2.6.2 no more than one (1) employee may be absent from the same battalion at one time for the following employee initiated absences if less than four and one-half (4.5) hours in duration: medical/dental appointments, family illness, and prescribed therapy; compensatory time off, or vacation. Vacation and compensatory time off shall be provided, if approved, on a first-come first-served basis, in the event of a tie, seniority shall be the determining factor.

34.2.6.4 Paramedics may only be absent from their assigned company for the vacancies identified in Subsections 34.2.6.1, 34.2.6.2 and 34.2.6.3 if an accredited paramedic (a support paramedic, minimum staffer or shift trader) is available and the Advanced Life Support of the company is maintained.

34.2.7 The department will attempt to pre-staff five (5) designated holidays (Thanksgiving, Christmas Eve, Christmas Day, New Years Eve, and New Years Day), two (2) weeks in advance by offering the option to work either half shifts or the entire shift by using a Holiday pre-staffing procedure. Any additional vacancies shall be filled by regular minimum staffing and voluntary mandatory procedures.

34.3 If an employee is contacted for pre-staffing and refuses the assignment, a minimum staffing position will not be reserved for that employee.

34.4 Any provisions of Article 14 of this Agreement to the contrary notwithstanding, it is understood that compensation for hours of work performed as a part of implementing the staffing levels referenced above will be paid, in addition to wages earned at the appropriate rate.

ARTICLE 35 RETURN TO WORK

35.1 An employee who returns to work following a work-related disability, sick leave or unpaid medical leave shall follow the return to work procedures outlined in the City of San José Official Action Guide.

35.2 An employee who returns to work following a work-related disability, sick leave, or unpaid medical leave must take the following steps:

35.2.1 When returning from work-related disability:

35.2.1.1 Employee provides information on ability to return to work from their treating physician to the Risk Management Section of the Finance Department. If they are cleared by their physician for full duty, they return to the line.

35.2.1.2 If, after the employee is cleared to return to the line, the Department questions the determination of the employee's treating physician, the Department contacts the City Physician and requests that the City Physician determines the need for further evaluation.

35.2.1.3 The City Physician makes the determination whether the employee stays on full duty, is assigned to modified duty, or is placed on disability leave status until the results are received.

35.2.1.4 The City Physician receives the results of the Functional Capacity Examination and determines whether the employee should stay on full duty, be assigned modified duty, or be placed on disability leave status. The City Physician notifies both the Fire Department and the Employee.

35.2.1 When returning from sick or unpaid medical leave after three (3) days or two (2) shifts:

35.2.2.1. Employee provides information on ability to return to work from their physician to the City Physician.

35.2.2.2 If questions on fitness for duty result from the medical information or an examination, the employee is scheduled for a Functional Capacity Examination, or similar examination. The Department may contact the City Physician and express concern with the fitness for duty of an employee previously on medical leave.

35.2.2.3 While awaiting results from the Functional Capacity Examination, the City Physician makes the determination whether the employee stays on full duty, is assigned to modified duty, or is placed on sick leave until the results are received.

35.2.2.4 The City Physician receives the results of the Functional Capacity Examination and determines whether the employee should stay on full duty, be assigned to modified duty, or be placed on sick leave status. The City Physician notifies both the Fire Department and the employee.

ARTICLE 36 EMPLOYEE RIGHTS

- 36.1 It is the mutual desire of the City and the Union to protect the rights of the employees. Accordingly, whenever any employee is questioned or interrogated by management concerning any matter which could lead to discipline, the employee may request that a Union representative be present during the questioning or interrogation session. In the event the employee exercises such right, no questioning or interrogation shall proceed until such time as a Union representative is made available to attend such session, provided such representation is made available within a reasonable period of time not to exceed five (5) days.
- 36.2 When the City finds it necessary to conduct an internal investigation, the investigation will be conducted according to the procedures set forth in the Department's Official Action Guide (OAG) and in accordance with any other rights otherwise granted by law applicable to the employee being investigated. Individuals will be trained in these procedures and the applicable legal rights of employees.
- 36.3 Any dispute regarding the application of the OAG procedures in the conduct of an investigation may be appealed in accordance with the grievance procedure.
- 36.4 An employee suspected of criminal misconduct may be ordered to answer questions, notwithstanding the employee's constitutional rights, upon penalty of discipline, provided the employee is advised that such answers may not be used in any criminal proceedings against the employee.
- 36.5 The implementation of this article will neither diminish nor enhance rights granted under Government Code 3300, if any exist. For purposes of this provision, Arson Investigators are deemed to be peace officers.

ARTICLE 37 RECRUIT CLASSIFICATION

All applicants who meet the requirements for the classification of Firefighter and who are selected for possible appointment to the classification of Firefighter shall first be classified as a Firefighter Recruit while in attendance and training at the Fire Academy. A Firefighter Recruit shall be a non-sworn employee unless and until the employee completes the Fire Academy training and is graduated from the Fire Academy. Upon completion of such training and graduation from the Academy, a Firefighter Recruit will be eligible to be appointed to the classification of Firefighter. While they are in the class, provisions of this Agreement unique to Firefighters and Disability Leave Supplement shall not apply to Firefighter Recruits. They shall be treated by the City as a civilian employee for these purposes.

Firefighter Recruits shall be awarded a step increase of approximately five percent (5%) upon being sworn in as a Firefighter. Their next step increases shall be due on their first, second, third, fourth, fifth and sixth anniversary dates of being appointed to the classification of Firefighter.

ARTICLE 38 LABOR MANAGEMENT COMMITTEE

- 38.1 Department Labor Management Committee. There shall be a Department Labor Management Committee consisting of three (3) representatives of the Department at the level of Bureau Director and above, and three (3) members of the Association. The Fire Chief, or designee, shall sit as one of the Department representatives and any of the six (6) members may be replaced with a alternate from time to time. The City Employee Relations Officer shall be requested to attend Labor/Management meetings and shall be provided an agenda in advance. The Employee Relations Officer shall sit at these meetings and attempt to resolve concerns to mutual satisfaction.

The Labor Management Committee shall meet no less than quarterly and shall consider and discuss matters of mutual concern pertaining to the improvement of the Department and the welfare of its employees. Accordingly, the Labor Management Committee will not discuss grievances properly the subject of the procedural process except to the extent that such discussion may be useful in suggesting improved department policies. Either the Association representatives or the Department representatives may initiate discussion of any subject of a general nature affecting the operation of the Department or its employees.

An agenda describing the issue(s) to be discussed shall be prepared by the initiating party and distributed at least three (3) days in advance of each meeting, and minutes shall be kept and maintained.

All persons representing both parties sit as equals with the Employee Relations Officer sitting as the facilitator. Nothing in this section shall be construed to limit, restrict or reduce the management prerogatives outlined elsewhere in this agreement.

- 38.2 Wellness Program Labor Management Committee. During the term of this contract the Department will convene a labor management committee to develop a proposal based upon the IAFF/IAFC Wellness Fitness Initiative. The proposal will be submitted to the City and the Union for approval by both parties. The parties agree that all members of Local 230 shall be required to participate in any implemented wellness fitness initiative program as a condition of employment.

ARTICLE 39 PROMOTIONAL EXAMINATIONS

- 39.1 Authority. The City retains the full and unrestricted right to establish, control and determine the promotional selection process and perform any managerial function not specifically limited by this Article. The promotional testing process shall be under the direction and authority of the Human Resources Director or designee.
- 39.2 Probation. The probationary period for employees appointed to the rank of Fire Engineer and above may be extended only when the probationary employee has been on disability leave, light duty, sick leave, leave for purposes related to pregnancy, military leave, or unpaid leave of absence during the probationary period and that such extension shall be equivalent to the length of time the employee was on leave and/or light duty.

39.3 Scheduling.

39.3.1 Each promotional examination will normally be held within one-hundred twenty (120) days of the date of expiration of the eligibility list for a classification, or within one-hundred twenty (120) days of the date of exhaustion of such eligibility list, should such exhaustion occur prior to the regular expiration date. The City shall notify the Union in the event of a timeline extension, and the reasons for such extension.

39.3.2 If, after the final application filing date, there is a change in test time, date, and/or location, the City will make a reasonable effort to notify each candidate of the change and if not successful in contacting each candidate provide a written notice of such change to each fire station. If a change occurs within seventy two (72) hours of the scheduled test time, date, and/or location a written notice will also be posted at the original location.

39.4 Completion Timeline. Examinations shall be completed within ninety (90) days from the date of the first examination of the examination process to the publication of the list unless extended by the City due to circumstances beyond the City's control.

39.5 Announcements. Examination announcements shall be provided to the Department for distribution to the Union and in appropriate work locations at least thirty (30) calendar days prior to the first scheduled test date.

39.6 Information on Weights.

39.6.1 The examination announcement shall contain the weights of each examination phase and will also indicate the job dimensions to be tested in the exam.

39.6.2 If a multiple choice examination is used in the promotional process, each multiple choice question shall be weighted equally.

39.6.3 If a multiple choice examination is used, prior to commencement of the next examination phase, any actions taken on challenged multiple choice items shall be provided to each candidate and the Union.

39.6.4 On the final day of the oral phase of the examination process, and prior to scoring the test, the City shall provide the union with the list of dimensions and weights evaluated in the oral phase.

39.7 Examination Weights. The weight of dimensions of a promotional examination shall be based on a current job analysis in accordance with either the Uniform Guidelines on Employee Selection Procedures or other professionally recognized employee selection guidelines as identified by the City.

39.8 Job Analysis. Upon request, a copy of the job analysis shall be made available for review by the Union.

39.9 Reading Lists. The Department will publish a recommended list of core reading materials for all ranks that will be updated periodically. The Department will provide a written copy

of the reading list for the written examination at least one hundred twenty (120) calendar days prior to the examination. The reading list shall include the source materials and subject matter areas to be used for development of the written examination. It is the responsibility of each candidate to study from correct textbooks and literature editions.

39.10 Subject Matter Experts. The City will select, when possible, subject matter experts with diverse experiences. When possible, subject matter experts shall reflect diversity in terms of years and experience in the Department, different shifts and assignments, and reflect the range of tasks under consideration. Upon request by Union, the City shall provide the Union with the number of subject matter experts, ranks held, and range of years of experience, within fourteen (14) calendar days after the last phase of the examination is administered.

39.11 Raters. In the event multiple raters are used to evaluate candidates, each rater will observe and score each candidate during some portion of the examination unless it is determined there may be a conflict of interest between a rater and particular candidate, or in an extenuating circumstance beyond the City's control. If possible, candidates will be assigned in a random fashion.

39.11.1 Raters selected to evaluate candidates shall receive training as arranged by the Human Resources Department.

39.11.2 Raters shall be provided the list of dimensions and weights evaluated prior to the oral examination phase.

39.11.3 It shall be the obligation of both a rater and a candidate to bring to the attention of the Human Resources Director, or designee, as soon as possible the identity of the rater or candidate posing a possible conflict of interest due to any knowledge of the individual. The Human Resources Director, or designee, shall determine whether or not such knowledge and possible conflict of interest shall constitute grounds for excusing the rater from rating the candidate.

39.11.4 The City shall make a reasonable effort to obtain raters from comparable fire departments for those portions of the examination involving emergency scene management questions or tactical exercises.

39.12 Conduct of Examination. Candidates shall be required to complete a confidentiality agreement which precludes candidates from sharing test information until all candidates have completed the examination phase. Candidates violating this provision shall be disqualified from the examination process and may be subject to disciplinary action.

39.12.1 The arithmetical pass point of any promotional examination shall be given to the Union upon request.

39.12.2 Every effort will be made to ensure examination questions reflect San José Fire Department and City policies and procedures.

39.12.3 Candidates must achieve a passing score on all phases of the testing process to achieve placement on the eligible list.

- 39.12.4 The passing point established for any component of the testing process shall be in accordance with either the Uniform Guidelines on Employee Selection Procedures or other professionally recognized employee selection guidelines as identified by the City.
- 39.12.5 Upon request, the City will provide to the Union pertinent information regarding the setting of pass points.
- 39.13 Scoring. Within thirty (30) calendar days of the establishment of an eligible list and upon written request by the Union to the Director of Human Resources, the Director, or designee shall meet and review with the Union the accuracy of the mechanical scoring of the written examination. All affected candidates shall be notified of any error which results in a change of score and/or placement on the eligible list.
- 39.14 Records Retention. At a minimum the City shall provide for the preservation of raters' score sheets and notes during the duration of the eligible list or litigation, if any.
- 39.15 Observers. The Union may elect to designate an observer(s), who is not a current or former employee of the City, for each examination phase, as applicable.
- 39.15.1 Observer(s) may be present in all phases of the examination including training of the raters; the examination process, except in the case of simultaneous exercises where the observer(s) can physically watch only one (1) exercise without being disruptive; and scoring sessions with the raters. The Union will arrange for the presence of its selected observer(s), including payment. The City shall not be required to compensate the Union observer(s) in any way. The schedule for the examination will not be affected by the ability or inability of the observer to be present, and/or failure of the Union to provide observers shall not constitute a basis for invalidation of the examination.
- 39.15.2 Observer(s) shall be provided the list of dimensions and weights evaluated prior to the oral examination phase during the training provided they participate in the training. To protect the confidentiality of the examination process any information provided to observer(s) shall be treated as confidential material, any breach of confidentiality shall result in the observer(s) immediate removal from the process.
- 39.15.3 The observer shall report to the City and Union irregularities in the examination process, if any, which appear to discriminate on the basis of race, color, religion, sex, national origin, ancestry, physical or mental disability, age, sexual orientation, marital status, medical condition (cancer related, AIDS and HIV) or other non-merit factors.
- 39.15.4 To report irregularities, the observer first reports perceived irregularities to the examination administrator designated by the City by the conclusion of the examination phase in which the alleged irregularity occurs. If that concern continues, the observer shall promptly report the concern to the Director of Human Resources and the Union President. If the observer only notes a pattern of discrimination, then the observer may report the irregularity at the end of the examination phase in which such pattern of discrimination has been noticed.

The observer shall only be concerned with or report on the process and administration of the examination and not on the contents of an examination.

- 39.15.5 If no irregularity is presented by the end of an examination phase, the observer may not raise an issue solely related to that examination phase at any later time with respect to discrimination.
- 39.15.6 With respect to an oral examination in which there are exercises being carried out simultaneously among different examinees, and if the observer cannot watch more than one (1) such exercise without disrupting it, then the observer will watch one (1) such exercise at a time.
- 39.15.7 The observer shall not talk, disrupt, provide clues to any candidate or rater during the examination process, interrupt proceedings in progress or otherwise disturb the examination process. The observer shall at all times protect the confidentiality of the examination content and candidates' performance except with regard to reports to the parties as provided for in this Section.
- 39.15.8 The observer at the conclusion of the examination process will make a report concerning the examination, and any recommendations the observer may have, jointly to the City and the Union.
- 39.16 Position Status. Upon request, the Department will provide a list to the Union identifying the number of filled and unfilled positions in each promotional rank.
- 39.17 Career Development. The Fire Chief or designee will meet with promotional candidates upon request to discuss career development concerns.
- 39.18 Appeal Process. Existing portions of the City's Civil Service Rules which directly pertain to the specific items enumerated above shall be superseded by this Article. All other provisions of Civil Service Rules and the City Charter pertaining to Civil Service promotional examinations shall remain in effect and are expressly incorporated herein. Any disputes regarding this Article or applicable Civil Service Rules shall be resolved through the grievance procedure except for claims challenging test questions which shall be resolved through the Civil Service process.

ARTICLE 40 USE OF TOBACCO

Employees shall not use any type of tobacco product within the station structures or any other Fire Department buildings, or in any city owned vehicles, apparatus or equipment.

ARTICLE 41 SUBSTANCE ABUSE POLICY

The City Substance Abuse Program & Policy is incorporated herein by this reference (Exhibit VI - City Policy Manual Section 1.4.2, Substance Abuse Policy) and made a part of this Agreement, subject to the following:

1. All drug testing will include a split sample and be performed by SAMSA certified labs.

ARTICLE 42 EMPLOYEE ASSISTANCE PROGRAM

- 42.1 A training plan for utilization and implementation of Employee Assistance Programs shall be developed jointly between the City of San José and IAFF Local 230.
- 42.2 Effective each July, the City will provide an additional sum of \$15,000 for training related to Firefighter Employee Assistance Programs.
- 42.3 Psychological Counseling: The City agrees to provide a psychological counseling program with the maintenance of doctor-patient relationship and with an alcoholic counseling component.

ARTICLE 43 CIVILIANIZATION OF FUNCTIONS

The City has the discretion to civilianize the positions listed below. Sworn incumbents may be transferred as other positions in the same classification become vacant or the City may delay implementation. If sworn incumbents are to be transferred, they will receive a minimum notice of ninety (90) calendar days. The City will give due consideration to the disabilities of employees occupying such positions and will make a reasonable effort to accommodate such disabilities, including the granting of reemployment rights in different job classifications under existing City programs that provide for maintaining pre-existing salary levels. At the City's sole discretion, civilianized positions may be filled temporarily by sworn personnel without the City waiving its right to civilianize such positions.

- 43.1 Fire Prevention - One Battalion Chief.

ARTICLE 44 MODIFIED DUTY

Personnel on disability or sick leave shall be placed on modified light duty assignments within the Fire Department upon request provided the employee's physician and/or medical consultant and the City's physician mutually approve and provided further that such modified light duty assignment is available and that the employee is qualified to perform the assignment.

ARTICLE 45 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 or negotiate on the Article or subsections thereof affected. If they are unable to come to an agreement on the matter, the provisions of Section 1111 of the Charter shall apply. All other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 46 NONDISCRIMINATION

- 46.1 Parties agree that they and each of them shall not discriminate against any employee or Organization member on account of race, color, creed, religion, sex and sexual orientation, national origin, ancestry, age, marital status, physical or mental disability, familial status, or political affiliation. An employee seeking to utilize the grievance procedure, claiming a violation of the subparagraph, shall make an election of remedies between the grievance procedure and any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. No employee shall be allowed to pursue the grievance procedure claiming a violation of this subparagraph if that employee cites the same underlying facts in pursuing any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964, and if no adverse finding has been rendered in pursuit of such remedy.

When an employee seeks to use the grievance procedure claiming a violation of this subparagraph, the City, the Organization and the employee shall enter into a complete settlement agreement to voluntarily settle the dispute through the grievance procedure, the employee agrees to waive the employee's right to pursue any other remedy otherwise available through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. Such settlement agreement shall contain a provision that the employee has been advised of the employee's right to consult an attorney and/or a local, State or Federal anti-discrimination agency regarding the employee's discrimination claim and that the employee's consent to the settlement agreement is voluntary and knowing.

- 46.2 The parties agree that they and each of them shall not discriminate against any employee or Organization member because of membership or lack of membership in the Organization, or because of any authorized activity on behalf of the Organization.

ARTICLE 47 CATASTROPHIC ILLNESS TIME DONATION

- 47.1 Employees may donate accrued vacation and/or compensatory time for credit to another employee who suffers a non-job related catastrophic injury or illness. Such donations may be made in accordance with the following:

47.1.1 To be eligible to receive donated leave, the recipient employee's illness must require that the employee be absent for at least thirty (30) cumulative days within the six (6) previous months. In addition, the recipient employee must have exhausted all paid leave prior to using donated leave.

47.1.2 Donations of vacation and/or compensatory time shall be made in increments of full or half hours.

47.1.3 Donations shall be on a dollar for dollar basis. The value of donated leave time shall be calculated at the donor's regular pay rate, then converted to hours of sick leave at the recipient's regular pay rate to the nearest half hour to determine the number of hours of sick leave available to the recipient. For employees covered

by the City's salary continuation insurance plan, use of donated leave will be an offset to benefits in accordance with the provisions of that plan.

- 47.1.4 Donations are irrevocable. Unused hours remaining when the recipient returns to work or terminates employment with the City shall be retained by the recipient.
- 47.1.5 In the event of a death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipients estate at one-hundred percent (100%) of the value at the employee's final hourly rate.

ARTICLE 48 MEET AND CONFER PROCESS AND MEDIATION

- 48.1 The meet and confer process between the City and the International Association of Firefighters, Local 230 shall be conducted in accordance with the following procedures:
 - 48.1.1 Meet and Confer. The goal of the meet and confer process is to reach a voluntary settlement which adequately addresses the interests of both parties. The parties shall be committed to conducting the process in good faith, treating all participants with respect and honoring each others' time by providing advance notice of scheduled and canceled meeting dates.
 - 48.1.2 Mediation. In the event impasse is declared regarding contract negotiations for a new MOA, the parties will participate in mediation prior to arbitration in an attempt to resolve the dispute. However, the parties shall arrange for an arbitrator and schedule arbitration dates in advance (arbitration shall be conducted in accordance with City Charter section 1111). If the mediation process has not been completed within a 90-day period, beginning with the first day of impasse as determined by written notification of impasse by either party, either party may proceed to arbitration. If the parties do not proceed to arbitration, the arbitration shall be canceled.
 - 48.1.3 If the parties remain at impasse following mediation, the bargaining unit may choose to make a presentation during a public City Council meeting without the requirement of a Council response.

ARTICLE 49 PARAMEDICS

- 49.1 No more than 40 percent of the total available support paramedics shall be assigned to any one shift. If the support paramedics must be balanced between shifts, it will be accomplished pursuant to the Routine Operations Policies and Procedures Manual (ROPP).

This agreement executed on the ____ day of _____, 2012, between the City of San José and the International Association of Firefighters, Local 230, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

FOR THE CITY OF SAN JOSÉ:

FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
LOCAL 230:

Debra Figone
City Manager

Jeff Welch
Vice President

Alex Gurza
Deputy City Manager

Joel Phelan
Executive Vice President

Aracely Rodriguez
Senior Executive Analyst

Juan Diaz
Secretary

Marco Mercado
Senior Executive Analyst

Soren Coats
Employee Representative

Chris Murphy
Employee Representative

Darren Wallace
Trustee

Sean Kaldor
Local 230 Negotiating Team Member

Chris Platten
Esquire, Local 230

EXHIBIT "J"
2011-2013 IAFF SALARY SCHEDULE
 Effective June 26, 2011
 (BI-WEEKLY RATES BASED ON A 40-HOUR WORKWEEK)



	2,415.20	Flat	Flat	Flat	Flat	Flat	Flat
2310 Fire Recruit							
2311 Fire Fighter	2,536.80	2,663.20	2,796.80	2,936.00	3,083.20	3,236.80	3,400.80
2312 Fire Engineer	3,114.40	3,268.80	3,432.00	3,605.60	3,785.60		
2313 Fire Captain	3,585.60	3,764.80	3,952.80	4,151.20	4,357.60		
2314 Battalion Chief	4,487.20	4,712.00	4,947.20	5,195.20	5,455.20		
2326 Fire Prevention Inspector	3,268.80	3,432.00	3,605.60	3,785.60	3,975.20		
2328 Arson Investigator	3,415.20	3,585.60	3,764.80	3,952.80	4,151.20		

Exhibit 3

Print

San Jose, CA Code of Ordinances

**Part 14
MEDICAL BENEFITS FOR CERTAIN PERSONS**

Sections:

- 3.36.1900 Medical benefits for retired members.
- 3.36.1910 Medical benefits for survivors of members.
- 3.36.1920 Requirements for participation in medical insurance plan.
- 3.36.1925 Reimbursement for Medicare Part B payments.
- 3.36.1930 Allocation of costs of providing medical insurance coverage to members or survivors.
- 3.36.1935 Payment of family coverage premiums in the case of guardianship of minor children.
- 3.36.1940 Eligible medical plan.
- 3.36.1950 Limitation on funding provided to retirement fund for medical benefits.

3.36.1900 Medical benefits for retired members.

Subject to the provisions of this chapter, a member or former member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.36.1940 if the requirements of subsection A., B., C., or D. of this Section 3.36.1900 are satisfied:

A. The member is retired for service under Part 6 of this chapter or for disability under Part 7 of this chapter and at the time of such retirement either:

- 1. Is entitled to credit for fifteen or more years of service; or
- 2. Receives a retirement allowance equal to at least thirty-seven and one-half percent of such member's final compensation.

B. The member is retired pursuant to Section 3.36.760 of this chapter; or

C. The former member separates from city service on or after July 5, 1992, prior to retirement, and satisfies all of the following requirements:

- 1. At the time of separation from city service the former member is entitled to credit for twenty or more years of service; and
- 2. The former member elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and

EXHIBIT 3

3.36.1920 Requirements for participation in medical insurance plan.

A. A member or former member, as specified in Section 3.36.1900, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the member or former member satisfies the following requirements:

1. The member retires for service or disability pursuant to the provisions of this chapter and at the time of retirement the member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or
2. The former member receives a monthly allowance pursuant to Section 3.36.1640 and within thirty (30) days of first receiving such monthly allowance the former member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums.

B. A survivor, as specified in Section 3.36.1910, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the following conditions are satisfied:

1. At the time of the death of the member or former member, the member or former member and the survivor were both enrolled in one (1) of the medical insurance plans sponsored by the city; and
2. The survivor applies to continue medical insurance coverage within sixty (60) days of the death of the member or former member; and
3. The survivor agrees to pay any applicable premiums.

C. A member or former member may secure medical insurance coverage for a spouse under the following conditions:

1. The spouse and member are married at the time of said member's retirement for service or disability; or
2. The spouse and the former member are married at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
3. The member marries subsequent to his or her retirement and applies to add such spouse in accordance with the terms of the eligible medical plan; or
4. The former member marries while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such spouse in accordance with the terms of the eligible medical plan.

D. A member or former member may secure medical insurance coverage for a domestic partner under the following conditions:

1. The domestic partner and the member are members of a domestic partnership at the time of said member's retirement for service or disability; or
2. The domestic partner and the member are member's of a domestic partnership at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
3. The member establishes a domestic partnership subsequent to his or her retirement and applies to add such domestic partner in accordance with the terms of the eligible medical plan; or
4. The former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such domestic partner in accordance with the terms of the eligible medical plan.

Section 3.36.1920 and with all other provisions of this Part 14.

K. A domestic partner who would otherwise qualify for family coverage because the domestic partner is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving domestic partner at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until January 31, 2007, only. Said surviving domestic partner must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.

L. Notwithstanding the provisions of subsection A. of Section 3.36.1920, a former member who meets the requirements of subsection D. of Section 3.36.1900 but who, within thirty (30) days of first receiving a monthly allowance, could not enroll in a medical insurance plan because the benefits provided in this Part 14 were not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued medical insurance coverage. Such former member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.

(Ords. 21686, 23807, 23889, 24093, 25615, 26566, 26641, 27712.)

3.36.1925 Reimbursement for Medicare Part B payments.

A. The plan will reimburse members, former members and survivors for the amounts paid by them for Medicare Part B coverage, subject to the following limitations:

1. The member, former member or survivor must be eligible for medical insurance coverage under the provisions of the plan and must be enrolled in an eligible medical plan.

2. The total amount paid by from the medical benefits account or the trusts established by Chapters 3.54 and 3.56 for medical benefits pursuant to Section 3.36.1930 plus the Medicare Part B reimbursement shall not exceed the premium for the lowest cost medical plan, as defined in Section 3.36.1930D., available to the member, former member or survivor.

3. The reimbursement shall be only for Medicare Part B payments made after February 4, 2000.

4. The member, former member, or survivor must submit proof of payment for Medicare Part B. Except for Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than the April 1 immediately following the calendar year for which reimbursement is sought. For Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than November 30, 2001.

5. The reimbursement shall not exceed the amount of the Medicare Part B payments for which proof of payment is submitted.

6. The reimbursement may be reduced or eliminated pursuant to Section 3.36.1950.

B. All reimbursements for Medicare Part B payments shall be made from the medical benefits account established by Section 3.36.575 or the trusts established by Chapters 3.54 and 3.56.

(Ords. 27768, 29065.)

3.36.1930 Allocation of costs of providing medical insurance coverage to members or survivors.

A. A surviving spouse who is otherwise eligible only for single coverage, but who elects family coverage pursuant to paragraph 2. of subsection D. of Section 3.36.1920, shall be required to pay that portion of the medical premium which exceeds the amounts payable for single coverage by the surviving spouse and the Medical Benefits Account as provided in Section 3.36.1930.

B. The portion of the premium required to be paid by the surviving spouse shall be deducted from the monthly allowances otherwise payable to the surviving spouse.

(Ord. 26566.)

3.36.1940 Eligible medical plan.

For purposes of this Part 14, members or their survivors may only be entitled to secure medical insurance coverage from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees.

(Ord. 21686.)

3.36.1950 Limitation on funding provided to retirement fund for medical benefits.

A. It is intended that the funding provided to the retirement fund for medical benefits provided by this system meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Milias-Brown Act (California Government Code Section 3500 et seq.), the city reserves the right to amend this part to limit the funding provided to the retirement fund for the medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 14 and the dental benefits provided by Part 16, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, the allocation of costs set forth in Section 3.36.1930 shall be adjusted as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The board, in consultation with its actuary, shall determine the adjustment to be implemented until this part is amended pursuant to Subsection A. above.

(Ords. 26416, 29065.)

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Exhibit 4

230. 72306



San Jose Fire Fighters • Local 230

425 E. Santa Clara Street, Suite 300, San Jose, CA 95113 • (408) 286-8718 • FAX (408) 286-2577



August 22, 2012

Alex Gurza
Assistant City Manager
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

RE: Retiree Health Care Lowest Cost Plan

Dear Alex,

Local 230 is confirming that it is the City's intention to subject San Jose Firefighters, Local 230 retirees to a new "high deductible" lowest cost health care plan as of January 1, 2013.

If so, please consider this letter a grievance and a demand for immediate arbitration. Local 230 believes this new lowest cost health care plan for Local 230 retirees is a violation of article 28.1 of the MOU and any other applicable rules, regulations, charter provisions and all other sections which are or later become applicable during the processing of this grievance.

Furthermore, because of the nature of this change and the immediate negative impacts to Local 230 retirees and future retirees we are requesting to proceed to immediate arbitration as provided for in article 20.6.1, Charter Section 1111 and the MMBA.

The impacts of this change are upon us and there is opportunity for resolve through the immediate arbitration process before "open enrollment" occurs in November of this year. Please make haste in requesting a list of arbitrators through the State Mediation and Conciliation Service, once received you can forward the list and coordinate further processing of this grievance through Local 230's legal counsel office of Christopher Platten.

EXHIBIT 4

Additionally, we are requesting an open information request be made available regarding this issue.

Sincerely,

Jeff Welch
Vice President
San Jose Firefighters, Local 230

C: Chris Platten, Esq.
Robert Sapien, President
Darren Wallace, Shift Representative
Jennifer Shembri, Office of Employee Relations

Hard copy will follow via US Mail

Exhibit 5



RENNE SLOAN HOLTZMAN SAKAI LLP

350 Sansome Street, Suite 300
San Francisco, CA 94104-1304
t: 415.678.3800
f: 415.678.3838

September 10, 2012

CHARLES SAKAI
CSAKAI@PUBLICLAWGROUP.COM

VIA US Mail and E-Mail

Chris Platten, Esq.
Wylie, McBride, Platten & Renner
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125
cplatten@wmpirlaw.com

**Re: Grievance/Request for Immediate Arbitration
Retiree Healthcare – 1500 Deductible Plan**

Dear Mr. Platten:

I am responding on behalf of the City of San Jose to IAFF Local 230's grievance and request for immediate arbitration dated August 22, 2012 (Grievance). In the Grievance, IAFF Local 230 asserts that the implementation of a new "high deductible" lowest cost healthcare plan (hereafter, the "1500 Deductible Plan") "for Local 230 retirees" is in violation of Article 28.1 of the Memorandum of Agreement (MOA) between the City and IAFF Local 230.

As an initial matter, IAFF Local 230 cannot assert an MOA term on behalf of persons who are not covered by the MOA. Article 2.1 under "Recognition" states that IAFF Local 230 "is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation *for employees assigned to classifications*" such as Fire Fighter, Fire Engineer, Fire Captain, etc. (Emphasis added) Since retirees are no longer City employees, and thus are not "assigned to classifications" in the bargaining unit represented by IAFF Local 230, IAFF Local 230 has no authority to assert any MOA provision on behalf of retirees.

Additionally, the Grievance is untimely. Article 20.2 provides that a grievance must be filed "within fourteen (14) calendar days following the event or events on which the grievance is based." The implementation of the 1500 Deductible Plan on the City's non-sworn bargaining units occurred on or about June 12, 2012. The Grievance was filed almost two (2) months after implementation. It is therefore untimely under Article 20.2 of the MOA.

Finally, the Grievance does not fit the criteria for immediate arbitration. Article 20.6.1 provides for immediate arbitration if the City "is threatening to take action in violation of the (MOA) in so short a period of time as to disallow the party from proceeding within the time limits of this Article." First, the City is not "threatening to take action in violation of the (MOA)" because implementation of the 1500 Deductible Plan does not affect any employees covered by the MOA. Second, there was ample time for IAFF Local 230 to file a grievance and proceed through the grievance procedure because it knew on or about June 12, 2012 of the City Council's implementation of the 1500 Deductible Plan. Nor is it necessary to proceed to immediate

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Retiree Healthcare – 1500 Deductible Plan
September 10, 2012
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arbitration now because the change does not take effect for another four months, which is ample time to exhaust the MOA's grievance procedure.

The grievance is hereby denied because it does not assert a violation on behalf of employees covered by the MOA and because it is untimely. Further, the demand for immediate arbitration is hereby denied as there is sufficient time for the grievance to proceed according to the time limits in MOA Article 20 before the 1500 Deductible Plan takes effect on January 1, 2013.

Sincerely,

Charles Sakai

cc: Alex Gurza, Deputy City Manager (*e-mail only*)
Jennifer Schembri, Assistant to the City Manager, Office of Employee Relations (*e-mail only*)
Robert Sapien, President of San Jose Firefighters, IAFF Local 230 (*U.S. Mail only*)

CDS/ES/tr

Exhibit 6

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Direct Dial Number

October 3, 2012

Charles Sakai, Esq.
Renne Sloan Holtzman & Sakai
350 Sansome Street, Suite 300
San Francisco, CA 94104

**Re: IAFF Local 230 and City of San Jose
(Retiree Health Care Grievance)**

Dear Mr. Sakai:

Your letter of September 10th states there reasons why the City refuses to proceed to immediate arbitration on this grievance.

None of those reasons suffice to prevent arbitration.

1. The grievance asserts a violation of the Memorandum of Agreement between the City and IAFF Local 230 for retiree health care benefits that are *contractually* provided by the MOA for both retirees and current employees who may become retired on and after January 1, 2013, when the proposed changes and implementation of a new "high deductible" lowest cost health care plan shall be implemented. The fact is that Local 230 represents employees in the classifications of firefighter, fire engineer, fire captain, battalion chief, etc. and has negotiated benefits for them both as employees and post-retirement as provided under the MOA. The MOA provides a dispute resolution process as is required under not only the terms of the MOA but the provisions of San Jose City Charter Sexton 1111. That process is binding. And the City has committed under the MOA to an immediate arbitration provision when adverse action is threatened on an imminent basis such as the facts presented. Accordingly, the City is required under the contract to proceed with this arbitration.
2. You confuse the notion of the scope of bargaining with the concept of a breach of contract. The California Public Relations Board has concluded that benefits for already retired employees are not within the scope of bargaining such that the employer is required to negotiate over changes to those benefits. See e.g., *Temple City Unified School District* (1989) PERB Dec. No. 782, p.70 (relying on *Allied Chemical and Alkalai Workers v. Pittsburgh Plate & Glass Company* (1971) 404 U.S. 157, 176-182.) PERB has reasoned, however, that although it lacks

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jurisdictions to enforce an agreement between the parties, a union may file an action for breach of contract when the employer has failed to carry out obligations asserted to exist under the contract with respect to current retirees. (See, generally, *El Centro Elementary School District* (2006) PERB Dec. No. 1863.) Here, the parties have agreed to resolve breaches of contract through the binding grievance arbitration procedure. Thus, the provisions of Article 20 apply to this dispute.

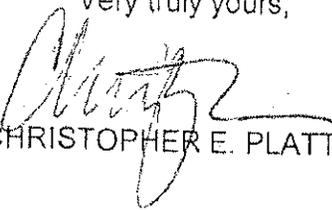
3. The grievance is timely. As you note in your letter of September 10th, the implementation of the lowest cost health care plan will not occur until January 1, 2013. Local 230 received written notice of the change in health care rates by letter dated September 10, 2012. Thus, the grievance is timely. Moreover, the implementation of the plan on "the City's non-sworn bargaining units occur" which you allege occurred on or about June 12, 2012 is not dispositive with respect to this bargaining unit which involves sworn employees. Therefore, the grievance is not untimely under Article 20.2 of the MOA.
4. Because the City is threatening to take action in a short period of time, that is by January 1, 2013, as to disallow the Union from proceeding within the time limits of the grievance procedure, this action is clearly within the provisions of Article 20.6.1 which provides for immediate arbitration.

In addition to the foregoing, as you know, time limits as a defense to a grievance is not a substantive defense to proceeding through the grievance process.

If you are not prepared to proceed to immediate arbitration by Friday, October 19, 2012, we will proceed with bringing a petition to compel arbitration.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



CHRISTOPHER E. PLATTEN

CEP:Imt

cc: Robert Sapien
Jeff Welch
Sean Kaldor
Darren Wallace
Alex Gurza

Exhibit 7



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October 12, 2012

CHARLES SAKAI
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VIA E-Mail and US Mail

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**Re: Grievance/Request for Immediate Arbitration
Retiree Healthcare – 1500 Deductible Plan**

Dear Mr. Platten:

We are in receipt of your letter dated October 3, 2012. While we appreciate your providing us your opinion on why you believe this matter can proceed to immediate arbitration, we respectfully disagree.

Regarding your first point, while it is true that current employees represented by the San Jose Fire Fighters, IAFF Local 230 (Local 230) may indeed retire someday and thus no longer be represented by Local 230, you have cited no provision of the Memorandum of Agreement (MOA) which has been violated with respect to active employee benefits, including benefits which may become available upon retirement.

Local 230 has not agreed to the lowest cost healthcare plan (Kaiser 1500 Plan) and thus active employees represented by Local 230 are not eligible for this plan. As we previously mentioned, Local 230 has no authority to assert rights of non-City employees such as current retirees under the MOA.

As to your second point, while you have eloquently delineated your view of the difference between scope of bargaining and breach of contract, you have not articulated any provision of the MOA which has been breached. Local 230 initially asserted that the City had violated MOA Section 28.1. That provision simply requires that the “benefits of the Police and Fire Retirement Plan System are to be paid in accordance with the provisions of the Plan and the Memorandum of Agreement on Retirement Between the City and the Union and the San José Police Officers’ Association.”

The retirement plan continues to pay the full premium of the lowest priced plan available to active employees. This is the benefit provided for in the City’s Municipal Code and the “provisions of the [Police and Fire Retirement] Plan.” In other words, the City has enacted *no change* that alters this particular dynamic with the implementation of the Kaiser 1500 Plan for the non-sworn employees – either now, June 12th, or January 1,

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2013. We are aware of no provision that binds the City or the retirement plan to making available a *specific* lowest priced plan to active employees.

Your third point about timeliness is also puzzling. The health care rates provided to Local 230 on September 10, 2012, did not change the lowest priced healthcare plan available to employees represented by Local 230 or for any other employee. The rates merely represent the rates of the Kaiser 1500 Plan which was implemented for active employees other than those represented by Local 230 or the San Jose Police Officers' Association (POA) on June 12, 2012. Since this was done in open session by City Council, after having fulfilled the requisite Sunshine requirements, we are unclear how Local 230 can claim a lack of notice. In any event, the Kaiser 1500 plan, and the rates associated with it, do not apply to active employees represented by Local 230 so we would appreciate clarification on why you believe something that does not apply to active employees represented by Local 230 can be grieved by Local 230.

Regarding your last point, and as we have previously described, the City is not "threatening to take action" against Local 230. Implementation of the Kaiser 1500 Plan for those *not represented* by Local 230 is insufficient grounds for Local 230 to compel the City to proceed to immediate arbitration under the terms of an MOA on behalf of those not covered by the MOA.

In addition, please note that MOA Article 20.6.6 states, in part, that "the arbitrator may not add to, subtract from, change or modify any provision of this [MOA] and shall be authorized only to apply existing provisions of this [MOA]...and to interpret only applicable provisions of this [MOA]." In addition, Article 20.9.6 provides that "(n)o resolution of any grievance...shall be contrary to the provisions of the [MOA]." As previously noted, the City continues to maintain the benefits provided under the MOA. The Kaiser 1500 Plan has not been implemented for employees represented by Local 230 thus no change to any provision of the MOA has occurred.

For the reasons stated above in addition to those we previously communicated to you on September 10, 2012, this grievance is denied and the City is not amenable to proceeding to immediate arbitration over terms not contained in the Local 230 MOA, on behalf of those not covered by the Local 230 MOA, and on behalf of those that are not represented by Local 230.

Please let me know if you have any questions.

Sincerely,



Charles Sakai

Cc: Alex Gurza, Deputy City Manager (via e-mail only)
Jennifer Schembri, Assistant to the City Manager (via e-mail only)