

**CITY OF SAN JOSE AND SAN JOSE POLICE OFFICERS' ASSOCIATION
TENTATIVE AGREEMENT**

PERIOD OF MEMORANDUM OF AGREEMENT

Article 1.1

Term: July 1, 2008 – June 30, 2010

WAGES

Article 5.1

- 3.75% effective June 29, 2008
- 1.50% effective June 28, 2009

HOLIDAY IN LIEU

See Attached

OVERTIME

See Attached

CIVILIANIZATION OF FUNCTIONS

See Attached

RETIREMENT

Article 49.6

Effective June 29, 2008, employees in classifications represented by the POA shall receive a 1.75% increase in base pay in lieu of any improvement in the police retirement formula. (See attached contract language.)

RETIREE HEALTHCARE FUNDING

See Attached

TENTATIVE AGREEMENTS

See Attached

- Commencement of Negotiations (01/24/09)
- Healthcare Cost Mitigation Labor Management Committee (01/24/09)
- Anti-Terrorist Training Pay (01/24/09)
- Vacation (Revised 01/24/09)
- Hours of Work and Overtime – Compensatory Time (07/24/08)
- Paychecks (04/29/08)
- Deputy Chief Executive Leave (04/08/08)
- Disciplinary Grievances (04/08/08)
- Hours of Work and Overtime – Work Period (04/08/08)

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- Life Insurance (04/08/08)
- Listed Functions (04/08/08)
- Standby Duty (04/08/08)
- Weapons (04/08/08)
- Uniform Allowances (03/03/08)
- Full Understanding, Modification and Waiver (02/14/08)
- Housekeeping (02/14/08)
- Housekeeping (02/14/08)
- Insurance Benefits – Copays (02/14/08)
- Insurance Benefits – City/Employee Contributions (02/14/08)
- Insurance Benefits – Vision Coverage (02/14/08)
- Substance Abuse Policy (02/14/08)
- Term (02/14/08)
- Time Donation Programs (02/14/08)

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during these negotiations. Anything not included in this document is not part of this tentative agreement.

FOR THE CITY:



Alex Gurza
Director of Employee Relations

1-24-09

Date

FOR THE UNION:



Bobby Lopez
SJPOA President

01/24/09

Date

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL

Proposal Holiday-In-Lieu

Proposed Language

ARTICLE 23 HOLIDAYS

23.1 Subject to the provisions of Section 23.2 of this Article, each employee shall be entitled to receive, as a holiday benefit from and after July 14, 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), 3.3847 hours of time off from duty for each biweekly pay period from and after July 14, 1985. Said holiday benefit shall be given to each employee at the time to be determined by the City Manager, in his/her discretion, or by the Chief of Police with the approval of the City Manager, either before or after the biweekly pay period for which such benefit is provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the calendar year within which falls 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.

23.2 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 23.1 of this Article, the City Manager shall find or determine that to give any such benefit would seriously impair the efficiency of the Police Department, the City Manager may order that such employee shall receive, in lieu of the holiday benefit to which he/she would otherwise be entitled for any biweekly pay period under the provisions of Section 23.1, as extra holiday compensation 5.623% of his/her regular salary during said biweekly pay period of full-time employment.

23.2.1 The wage increase effective July 2, 2006 includes consideration specific to the settlement of the Holiday-in-Lieu grievance filed on August 2, 2002. The terms of this settlement are set forth in a separate agreement dated December 7, 2005.

23.3 Effective June 28, 2009, all classifications represented by the POA shall receive a 5.623% special pay adjustment in place of the holiday-in-lieu compensation provided in 23.2 above. Beginning June 28, 2009 and continuing thereafter, the holiday benefit provided in 23.1 and 23.2 above shall cease to apply to all classifications represented by the POA. The 5.623% special pay adjustment shall be added to the general wage increase effective on June 28, 2009, and shall not be compounded. It is expressly understood that the 5.623% special pay adjustment is compensation for all employees in classifications represented by the POA in lieu of holiday benefits. There shall be no additional holiday compensation.

~~By virtue of including the language of this Article 23 in this Agreement (previously only contained in Salary Resolutions), the parties do not intend in any way to alter their previously existing duties, rights, or responsibilities.~~

CITY PROPOSAL

Proposal Overtime

Proposed Language

13.6.1 An employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of three (3) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime payment beyond three (3) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Effective June 28, 2009, an employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of six (6) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime payment beyond six (6) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Payment for overtime worked, authorized pursuant to this paragraph, shall be made as soon after the pay period in which the overtime is worked as practical, but in no event longer than two pay periods after the pay period in which the overtime is worked.

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL

Proposal Modification of Bargaining Unit Work

Proposed Language

ARTICLE 50 MODIFICATION OF BARGAINING UNIT WORK

- 50.1 City Attorney's Office. Officers and Sergeants assigned to the City Attorney's Office may be reassigned to the Police department but such positions will not be civilianized.
- 50.2 For optimal resource management, the City, in its discretion, may add civilian personnel to perform the work currently performed by sworn personnel provided the following:
- 50.2.1 The POA bargaining unit will not be reduced in number of positions as a result of that action,
- 50.2.2 The work is not normally associated with sworn Peace Officer status and does not require a P.O.S.T. certificate. Examples of duties which are normally associated with Peace Officer status include the following:
- criminal investigations
 - patrol-related functions
 - emergency services
 - community policing
 - training of sworn personnel on public safety-related issues
 - processing of prisoners, and
- 50.2.3 The City conducts a meeting with the POA to discuss operational impact prior to making a final decision.
- 50.3 It is understood by the parties that Investigative Aides and Community Service Officers are applicable to subsection 50.2.2 of this provision.
- 50.4 During the term of the 2008-10-03 agreement no more than ~~four (4)~~ fifteen (15) sworn positions will be "civilianized" in accordance with subsection 50.2. Any further civilianization, as defined by this section, would be subject to the meet and confer process at the expiration of this MOA.
- 50.5 The parties will evaluate the effects and success of subsections 50.2-50.4 at the end of this agreement. Agreed upon modifications, if any, shall be included in the following agreement.

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL

Proposal Retirement

Proposed Language

ARTICLE 49 RETIREMENT

49.6 In lieu of an enhancement to the current retirement formula (2.5% of final compensation per year for up to 20 years and 4% of final compensation per year for 21-30 yrs of service), effective June 29, 2008, employees in classifications represented by the POA shall receive a 1.75% base pay increase. The 1.75% base pay increase shall be added to the general wage increase effective on June 29, 2008, and shall not be compounded.

CITY PROPOSAL

Proposal Retiree Healthcare Funding

Proposed Language

**ARTICLE 50 RETIREE HEALTHCARE FUNDING
(Current Article 50 and subsequent articles to be re-numbered)**

- 50.1 The City and the Employee Organization agree to transition from the current partial pre-funding of police retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the police 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 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.36.575 (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.
- 50.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.
- 50.3 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 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than 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.
- 50.4 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

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

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.

- 50.5 The City will establish a qualified trust ("Trust") before June 28, 2009. If the Trust can not be established before June 28, 2009, then the City will hold in a separate reserve any required contributions over the policy method and then deposit, with interest actually earned, into the Trust as soon as practical after the Trust is established.
- 50.6 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Police retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL

Proposal Commencement of Negotiations

Proposed Language

ARTICLE 3 COMMENCEMENT OF NEGOTIATIONS

It is mutually agreed that the first meeting of the parties will be held no later than twenty (20) calendar days after the City or Association receives notice from the other, which may be any date after ~~February 28~~ January 1 of the year in which the current contract terminates.

TA

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1-24-09

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01/24/09

CITY PROPOSAL

Proposal Healthcare Cost Mitigation Labor Management Committee

Proposed Language

ARTICLE 37 LABOR MANAGEMENT COMMITTEE

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

37.2—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.

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

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

37.2 Healthcare Cost Mitigation Labor Management Committee. On or before September 1, 2009, the parties shall establish a labor/management committee to research and consider approaches to mitigating the cost to both parties of active employee and retiree healthcare benefits. The committee shall study, in addition to any other approaches it deems appropriate, issues of plan design, co-pays and deductibles, a second tier for new employees, and other cost mitigation strategies. The Committee may, by mutual agreement, recommend implementation of joint recommendations. Absent agreement on matters within the scope of representation, those subjects may be raised in the 2010 negotiations.

TA.
[Signature]
1-24-09

City of San Jose
January 24, 2009

[Signature]
01/24/09

2009 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL

Proposal Anti-Terrorism Training Pay

Proposed Language

ARTICLE 5 WAGES AND PREMIUM PAY

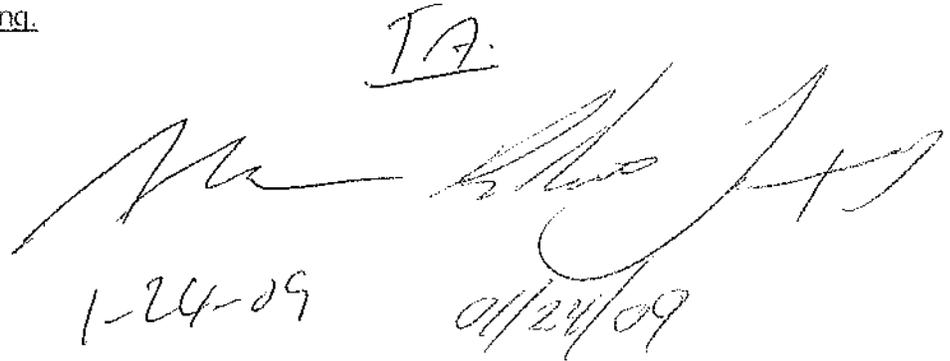
5.2.10 Anti-Terrorist Training Pay

5.2.10.1 Each employee assigned to classifications represented under this Memorandum of Agreement who on an annual basis successfully completes the annual training offered by the Police Department in Police Anti-Terrorist Tactics shall be paid, for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this agreement, additional compensation equal to five (5%) percent of the employee's base pay. Each eligible employee must certify annually, every September 1, by the Police Department as having successfully completed the annual training in order to be eligible to continue to receive the pay. The incentive pay will begin the first day of the pay period following the date the Police Department submits certification to the City's Finance Department for the employees who have successfully completed the training. Employees will not be eligible for this premium until such time he/she successfully completes the annual training and submits verification to the Finance Department. No overtime compensation per Article 13.6 shall be provided for Officers' completion of this training.

5.2.10.2 This incentive pay shall be pensionable.

5.2.10.3 The five (5%) percent incentive pay will be included in salary surveys submitted by each party in future negotiations and arbitration, if applicable.

5.2.10.4 Effective March 22, 2009, the 5% Anti-Terrorist Training pay will be rolled into base pay in recognition of the additional training that all employees represented by the POA receive related to Police Anti-Terrorist Tactics. Employees must successfully complete the Police Department's annual Police Anti-Terrorist Tactics training each year as a condition of continued employment. There shall be no additional compensation for the completion of Anti-Terrorism Training.

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1-24-09 01/24/09

2009 CITY OF SAN JOSE – POA NEGOTIATIONS
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CITY PROPOSAL #5 (REVISED)

Effective the first payperiod of payroll calendar year 2010, vacation shall no longer be advanced to employees and employees will only be allowed to take vacation that they have earned.

Proposed Language

ARTICLE 30 VACATION

30.1 Each eligible full-time employee, ~~who has been employed for at least thirteen (13) biweekly pay periods,~~ shall be granted vacation leave with pay in accordance with the following:

30.1.1 Vacation Accrual. Each employee shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or amendments thereto. ~~To wit, an employee shall be entitled to accrue vacation leave in the amount specified below for each cycle of twenty-six (26) full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of his/her employment as specified below:~~

<u>Years of Service</u>	<u>Hours of Vacation per 26 Pay Period Cycle</u>
1st 5 years	80 hours
6th year - 10th year	120 hours
11th year - 12th year	140 hours
13th year - 14th year	160 hours
15th year or more	180 hours

30.1.2 Carry-Over of Vacation Leave

An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. This carryover process shall expire at the end of the 2009 payroll calendar year.

Effective the first payperiod of payroll calendar year 2010, 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 2010, any employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount

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30.1.3 Effective the first payperiod of payroll calendar year 2010, employees will only be allowed to use vacation that has already been accrued.

30.1.34 Reimbursement for Unearned Vacation Leave

If the employment of any full-time employee should cease, and if he/she should have taken more vacation leave than he/she had accrued at the time of termination of his/her employment, there shall be deducted from his/her final pay, or he/she shall refund to the City, such pay as he/she shall have received for vacation leave theretofore taken by him/her. The provisions of this Subsection 30.1.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of the employee's death or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one year in duration.

30.1.45 Payment for Unused Accrued Vacation Leave Upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued.

30.2 Vacation Pay

~~If, in the judgment of the City Manager it is desirable by reason of a shortage of manpower 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, he/she 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 his/her regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, he/she may elect, in writing, filed with the Director of Employee Relations, to carry over such leave to the subsequent cycle of twenty-six (26) biweekly pay periods.~~

30.3 Vacation Leave

Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such Department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she 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 he/she 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 shift is worked by employees in such classification.

30.4 Computation of Vacation Leave

**2009 CITY OF SAN JOSE – POA NEGOTIATIONS
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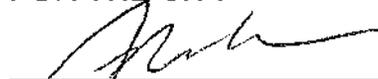
- 30.4.1 For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time-off, or any other paid leave, shall be deemed to be "time worked."
- 30.4.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation even though such employee may, upon satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

30.5 Vacation/Sick Leave Conversion

- 30.5.1 In the event a member becomes seriously ill or seriously injured requiring hospital treatment or hospitalization while on vacation, and it can be established that the member is incapacitated due to the illness or injury, the day or days he/she is sick under these circumstances shall be carried as sick time rather than vacation and the member will for all purposes be treated as though he/she were off solely for the reason of his/her illness or injury. Upon request, the member shall submit medical documentation of the illness or injury from attending physician.

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

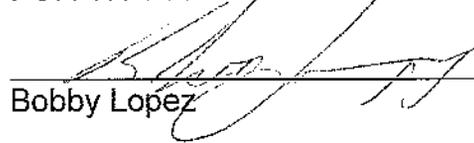


Alex Gurza

1-24-09

Date

FOR THE UNION



Bobby Lopez

01/24/09

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #23

Proposed Language

ARTICLE 13 HOURS OF WORK AND OVERTIME

- 13.1 The workweek shall be seven (7) days commencing at 12:01 A.M. Sunday and ending at 12:00 Midnight the following Saturday.
- 13.2 The workday, for pay purposes, shall be a twenty-four (24)-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 13.3 Except for employees assigned to four days of ten-hour shifts, and employees assigned to five/eight-hour shifts other than Monday through Friday, the normal work schedule shall be forty (40) hours per week, consisting of five (5) consecutive days of eight (8) hours each, Monday through Friday. Shifts other than the ten-hour shift shall be exclusive of a lunch period.
- 13.4 Employees assigned to a five/eight-hour shift schedule shall be given two (2) consecutive days off and employees assigned to a four/ten-hour shift shall be given three (3) consecutive days off even though such 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 or three consecutive days off, whichever is applicable.
- 13.5 The present four/ten workweek shall continue during the term of this Agreement unless mutually changed by the parties.

13.5.1 However, the Department, in its discretion, may change the following units to a five/eight workweek:

- | | |
|----------------------------|----------------------|
| A. BFO Administrative Unit | F. Reserves |
| B. School Safety | G. Training |
| C. Crime Prevention | H. Video |
| D. Traffic Investigation | I. Explosive Control |
| E. P.A.L. | J. Captains |

13.5.2 In addition, modified duty non-uniformed assignments may be changed to a five/eight-hour schedule, unless they are assigned to one of the units listed in Section 13.5.1, whereupon their shift may be changed with the rest of that unit.

13.5.3 Alternate Work Week

As an alternative to the normal five-day/eight-hour work schedule for employees outside of the Bureau of Field Operations, in accordance with Article 13.4 and subject to the concurrence and approval of the Chief or the Assistant Chief, a regular full-time employee may elect to work an alternate work schedule. The following conditions and restrictions shall apply to all employees electing an alternate schedule.

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- 13.5.3.1 An employee may elect to establish a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed eighty (80) hours in any biweekly pay period. Alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly pay period.
 - 13.5.3.2 No alternate work schedule may be established in which overtime is incurred either under this Agreement or under federal or state law. Alternate work schedules may be canceled if overtime or sick leave balances adversely affect the service level, operation, or budget of a unit.
 - 13.5.3.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.
 - 13.5.3.4 If one or more employees' request to establish an alternate workweek is denied, or if an alternate schedule is canceled, Association shall have the right to meet with the Assistant Chief to appeal the decision. The decision of the Assistant Chief shall be final.
 - 13.5.3.5 Any alternate work schedule shall terminate upon the date of the transfer, promotion, or demotion of the employee.
 - 13.5.3.6 Neither the failure of the Department to enter into an alternate work agreement, nor the termination by the Department of any such agreement shall be subject to the Grievance Procedure in Article 25; provided, however, that if alternate work agreements have been terminated on a Bureau-wide basis, such action shall be subject to the grievance procedure.
 - 13.5.3.7 Consecutive days off may be waived by mutual agreement.
 - 13.5.3.8 Should the employee have a scheduled court appearance or any other scheduled requirement to work on his/her scheduled day off, the employee will adjust his/her workweek to include the days as part of his/her workweek.
- 13.6 An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four/ten-hour work days, or in excess of forty (40) hours per workweek, shall be compensated at the rate of time and one-half the employee's base hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement. Except as otherwise required by Article 14, 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 compensated to the nearest half-hour.
- 13.6.1 An employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of three (3) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime

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TENTATIVE AGREEMENT**

payment beyond three (3) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Payment for overtime worked, authorized pursuant to this paragraph, shall be made as soon after the pay period in which the overtime is worked as practical, but in no event longer than two pay periods after the pay period in which the overtime is worked.

13.6.1.1 Employees assigned to "pay cars" and/or assigned to work on overtime in the programs noted herein shall be paid in cash for such overtime worked. The City reserves the right to modify the listed functions as necessary.

- Entertainment Zone
- Youth Protection Program
- Youth Services Detail
- Truancy Abatement and Burglary Suppression Program
- Project Crackdown
- Hazardous Escorts
- Programs with Specific Funding Sources (i.e. grant-funded or fee-supported programs)

13.6.2 The outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. An employee may exceed the 240 limit during the year but shall be responsible for bringing the balance back to the 240 hour maximum level by taking the time off prior to the end of the calendar year. This time off must be pre-approved by the supervisor.

13.6.2.1 In the event the outstanding amount of accrued compensatory time owed to an employee exceeds 480 hours, the employee will automatically receive payment for any hours in excess of 480 hours.

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

13.6.4 Except as provided in Section 13.6.5 below, overtime worked by the employee for compensatory time shall remain compensatory time to be taken, subject to provision 13.6.2 and 13.6.3 above, so long as the employee continues his/her employment in a classification represented by the Organization. Any employee whose employment is terminated by reason of resignation, discharge, or retirement, and who, at the time thereof has accrued unused compensatory time, shall be paid for such time at the appropriate rate. In the event of the death of an employee who has accrued unused compensatory time, the appropriate payment shall be made to the executor of the will, the administrator of the estate or other representative, as authorized by law.

13.6.5 Notwithstanding the provisions of section 13.6.4 above, the City shall have authority to require employees to immediately take time off to reduce the outstanding amount of accrued compensatory time off above the 240 hour maximum level, with the following exceptions:

13.6.5.1 If an employee is unable to reduce his/her comp-time balance to 240 hours by the end of the last pay period of the calendar year, by December 1 of that year,

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

an employee shall submit a written plan to his/her immediate supervisor outlining how the excess hours will be reduced. If the employee submits a plan by that date, the employee shall receive a ninety (90) day carryover (to March 31 of the next calendar year) of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance by March 31.

13.6.5.2 If an employee's compensatory time balance is above the 240 maximum level at the end of the last pay period of the calendar year and the employee complied with the provision of subsection 13.6.5.1 above but earned additional compensatory time hours above those previously identified for a ninety (90) day carryover or the employee did not submit a carryover plan because his/her compensatory time balance was at or below the 240 maximum level at the time the carryover plan was due for submittal; the employee shall submit either an amended or new plan to his/her immediate supervisor by the end of the first pay period of the new calendar year outlining how the excess hours will be reduced. If the employee submits the amended or new plan within the specified timeline, the employee shall receive a ninety (90) day carryover (to March 31 of the new calendar year) of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance within the ninety (90) day time frame.

13.6.5.3 If emergency circumstances necessitate that an additional sixty (60) days (beyond the limits set forth in provision 13.6.5.1) is needed for an employee to bring his/her compensatory time balance into compliance with provision 13.6.2, the employee shall submit a written request to the Chief of Police, again outlining the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance. The approval of this request shall be at the discretion of the Chief of Police.

13.6.5.4 No employee shall be required to reduce his/her individual number of accrued hours of compensatory time below 240 hours without the approval of the individual employee.

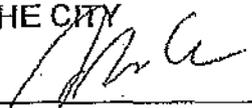
13.6.6 Supervisory approval or disapproval of compensatory time off shall be based on scheduling and staffing needs and not on an individual's reason for seeking to use the compensatory time.

13.6.7 The City reserves the right to buy down any employee's outstanding balance of compensatory time, subject to the provision of subsection 13.6.5.3. Such buy down shall be uniform, by percentage, as to all employees within a bureau.

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

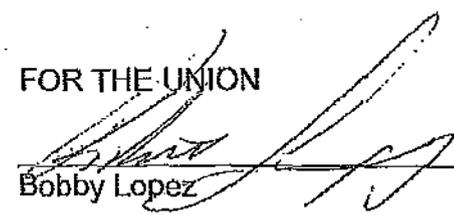


Alex Gurza

7-24-08

Date

FOR THE UNION



Bobby Lopez

07/28/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #13

Proposed Language

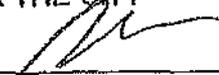
ARTICLE 11 PAYCHECKS

- 11.1 City Finance Department shall make paychecks available by 0830-1030 hours on the day of distribution; provided, however, there will be no penalty in the event that some unforeseen problem delays distribution. In such event, the Finance Department will make every reasonable effort to make paychecks available as soon after 0830-1030 hours as possible.
- 11.2 Employees may at their option, file with the Finance Department appropriate written instructions for the automatic deposit of their pay checks which instructions may be amended at such times as the Finance Department determines are reasonable.
- 11.3 Overpayment Payback

Any appropriate payback process from any employee to the City shall be in the same amount and at the same rate in which the overpayment occurred. This provision does not create a right of appeal where one did not exist before.

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FOR THE CITY

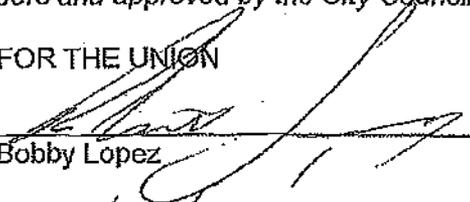


Alex Gurza

4-29-08

Date

FOR THE UNION



Bobby Lopez

04/29/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #12

Proposed Language

13.6.9 Deputy Chief Executive Leave

The classification of Deputy Chief is excluded from receiving paid overtime or accruing compensatory time off for hours worked in excess of eight (8) hours per day or forty (40) hours per week. In lieu of receiving paid overtime and compensatory time off, Deputy Chiefs are entitled to forty (40) hours of Executive Leave per calendar year. Executive Leave is not an accrued benefit, and may not be carried over to future calendar years. (Note: the calendar year begins the first day of pay period 1 and ends the last day of pay period 26.)

~~13.6.9.1 The Chief of Police may approve-recommend to the City Manager or his/her designee up to forty (40) additional hours of Executive Leave for Deputy Chiefs per the provisions of calendar year the Management Performance Program (City Policy Manual, Section 3.3.2) for the following circumstances:~~

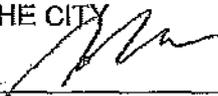
- ~~a) when a Deputy Chief has been required to work an extraordinary amount of overtime during a particular period, or~~
- ~~b) to recognize exceptional performance or achievement on a special project.~~

~~Granting additional leave should be considered exceptional rather than standard practice.~~

~~13.6.9.1.1 If the full balance of forty (40) hours of Executive Leave is not used within the calendar year, unused credit up to a maximum of sixteen (16) hours will be paid out at the end of the calendar year.~~

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FOR THE CITY

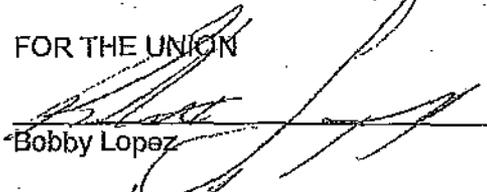


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

4/8/08

Date

**2008 CITY OF SAN JOSE — POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #14

Proposal Revisions to Disciplinary Grievances

Proposed Language

25.8 Disciplinary Grievances

25.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters that are cognizable before the Civil Service Commission plus disciplinary transfers.

25.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation. ~~This limitation is without prejudice to pending matters.~~

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

25.8.4 Documented Oral Counselings (DOCs) retained by the Internal Affairs Division may be appealed under this section only to the level of Assistant Chief of Police. However, should a particular DOC be the result of the Assistant Chief's having reduced a higher form of discipline to a DOC with which the affected officer is still dissatisfied, such DOC may be appealed to the level of the Chief of Police. DOCs received for preventable, automobile accidents shall not be appealable unless the officer contends that the accident was not preventable.

25.8.5 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., Government Code Sections 3300 et. seq.).

25.8.6 An employee challenging a suspension, demotion, dismissal or disciplinary transfer discipline shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil Service Commission. 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. Within twenty (20) days of the date of a Notice of Discipline, the employee may file an appeal with the Civil Service Commission or pursue the grievance procedure or both. The grievance procedure shall begin at Step ~~VIII~~ Arbitration for this process. Immediate arbitration shall not apply.

~~25.8.7 At the last step of the grievance procedure herein, just prior to binding arbitration, the employee shall elect which remedy he/she wishes to seek — binding arbitration as provided herein or a hearing before the Civil Service Commission. As otherwise provided in this Agreement, for the matter to go to binding arbitration, the Organization must agree (i.e., must be the party taking the matter~~

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

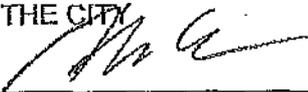
to arbitration).

25.8.78

The employee shall confirm his/her election of remedies in writing to the Director of Employee Relations. If the employee files an appeal to the Civil Service Commission and also an appeal through the grievance procedure of this Agreement within the required timelines, the election of remedies must be made no later than 45 days from the date of the Notice of Discipline. The election of remedies must also be made prior to the submission of a request for a list of arbitrators and prior to scheduling a Civil Service Commission appeal hearing. As otherwise provided in this Agreement, for the matter to go to binding arbitration, the Organization must agree (i.e., must be the party taking the matter to arbitration.

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FOR THE CITY

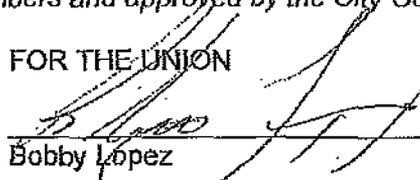


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

04/08/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #11

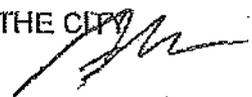
Proposed Language

ARTICLE 13 HOURS OF WORK AND OVERTIME

13.1 The ~~workweek work period shall be seven (7)~~fourteen (14) days and shall coincide with the pay period commencing at 12:01 A.M. Sunday and ending at 12:00 Midnight the following Saturday of the following week.

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FOR THE CITY

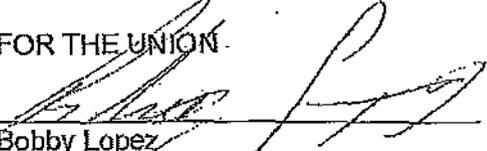


Alex Gurza

Date

4-8-08

FOR THE UNION



Bobby Lopez

Date



Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #16

Proposed Language

8.6 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 self-insured plan.

8.6.1 Employees may apply to purchase additional Life Insurance coverage in increments at the rate available to the City in amounts equal to 1x, ~~or~~ 2x, 3x or 4x annual salary, not to exceed \$750,000.

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FOR THE CITY

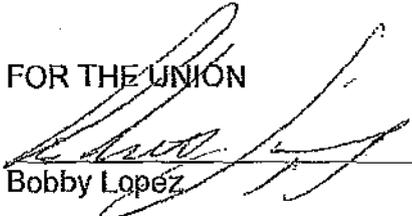


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

04/08/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #1B

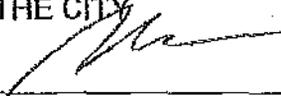
Proposed Language

13.6.1.1 Employees assigned to "pay cars" and/or assigned to work on overtime in the programs noted herein shall be paid in cash for such overtime worked. The City reserves the right to modify the listed functions as necessary.

- Entertainment Zone
- ~~Youth Protection Program~~
- ~~Youth Services Detail~~ Downtown Services Detail
- Truancy Abatement and Burglary Suppression Program
- Project Crackdown
- Hazardous Escorts
- Programs with Specific Funding Sources (i.e. grant-funded or fee-supported programs)

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FOR THE CITY

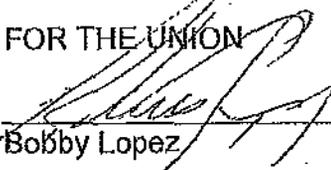


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

4/8/08

Date

**2008 CITY OF SAN JOSE - POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #1D

Proposed Language

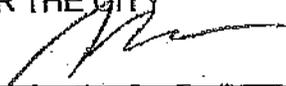
ARTICLE 15 STANDBY DUTY

15.1 Employees assigned to the sections noted herein and who are regularly required to perform standby duty shall be eligible for standby compensation in accordance with 15.3.

1. The Sexual Assault Investigations Unit
2. The Homicide Detail
3. The Crime Scene Units
4. The Bomb Squad
5. Air Surveillance (See Section 5.2.8)
6. Professional Standards and Conduct Unit

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

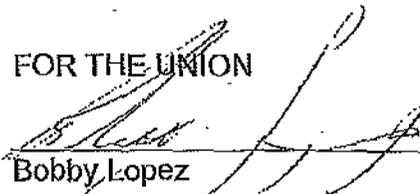


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

4/8/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #1E

Proposed Language

ARTICLE 28 WEAPONS

~~28.3 Officers hired prior to July 6, 1972 may also carry the following weapons:~~

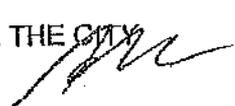
~~28.3.1 A Smith & Wesson or Colt revolver no smaller than .38 caliber or larger than .44 magnum with a 4-6 inch barrel.~~

~~28.3.2 A semi-automatic pistol in 9mm or .40 or .45 caliber.~~

28.4 All officers, regardless of date of hire, may carry a semi-automatic pistol in .380 caliber for any plainclothes assignment, off duty, or as a back-up weapon.

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FOR THE CITY

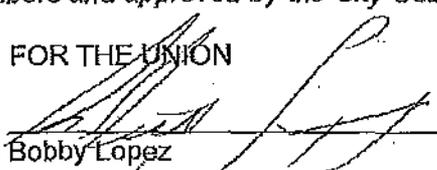


Alex Gurza

4-8-08

Date

FOR THE UNION



Bobby Lopez

04/08/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

UNION PROPOSAL #11

Proposed Language

ARTICLE 9 UNIFORM ALLOWANCE

- 9.1 The City shall provide a uniform allowance in the amount of \$675.00 per calendar year included on an employee's regular payroll check. This amount will be prorated for employees who work less than a full year. For calendar year 2004, the \$675.00 shall be paid in January 2005. For calendar year 2005, \$675.00 shall be paid in January 2006. For calendar year 2006, \$675.00 shall be paid in January 2007. For calendar year 2007, \$675.00 shall be paid in January 2008. For calendar year 2008, \$675 shall be paid in January 2009.
- 9.2 Effective the first pay period of payroll calendar year 2009, employees shall receive a uniform allowance not to exceed \$675 annually. Payment shall be made during the first two pay periods of each month, in the amount of \$28.12 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.
- 9.2 In the event new classifications are established during the term of this Agreement and assigned to Representation Units 011, 012 and 013 which consist solely of sworn personnel, such employees shall be paid an annual uniform allowance in accordance with the provisions of this Section.
- 9.3 The City agrees to pay the prorated cost of replacement or repair for uniforms damaged in the ordinary course of performance of regular job duties. Schedules adopted by the City for such reimbursement shall be kept reasonably current.

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FOR THE CITY

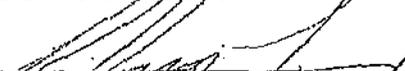


Alex Gurza

3/3/08

Date

FOR THE UNION



Bobby Lopez

03/03/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #2

Proposed Language

ARTICLE 19 FULL UNDERSTANDING, MODIFICATION AND WAIVER

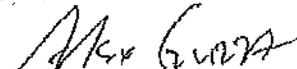
19.5 In the event that the City and IAFF Local 230 reach a settlement covering the time period covered by this MOA that has a total compensation cost of greater than 12.9% (not including the medical and dental concessions) plus the cost of the retirement benefit included in this agreement for IAFF, Local 230, this MOA will reopen on the subject of total compensation and the parties will meet and confer.

This provision will not apply if the City and IAFF Local 230 reach a settlement covering the time period covered by this MOA that has a total compensation cost of 12.9% (not including the medical and dental concessions) plus the cost of the retirement benefit included in this agreement for IAFF, Local 230.

This provision will not apply to any change in Local 230 wages and benefits which occurs as the result of an interest arbitration award that is the result of contested issues resolved only via a full evidentiary hearing and substantive briefing.

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY



Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

02/14/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #10

Proposal Housekeeping

Proposed Language

49.4 ~~The current formula for calculating retirement benefits is two-and-one-half (2 ½%) percent of final compensation for each year of service with the City up to twenty (20) years, plus three (3%) percent of final compensation for each year of service with the City between 21 and 25 years, and four (4%) percent from 26-30 years subject to a maximum of eighty-five (85%) percent.~~

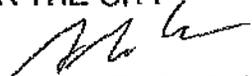
~~The enhanced benefit formula will be changed to two and one half (2 ½%) percent of final compensation for each year of service with the City up to twenty (20) years, plus four (4%) percent of final compensation for each year of service with the City between 21 - 30 years subject to a maximum of ninety (90%) percent.~~

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

~~The enhanced benefit formula will be effective for all members of the Police & Fire Retirement Plan who retire on or after July 1, 2006.~~

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FOR THE CITY

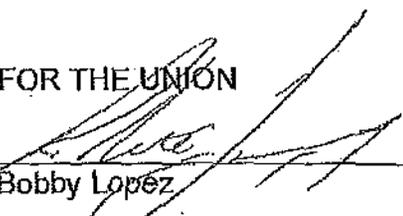


Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

02/14/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #1

Proposed Language

I. Replace "Understanding" with "Agreement".

ARTICLE 1 TERM

1.1 This Memorandum of ~~Understanding~~ Agreement (hereinafter, "Agreement") shall become effective March 1, 2004, except where otherwise provided, and shall remain in effect through June 30, 2008.

II. Replace "class title and number" with "classification".

5.2.3 Training Officer Duty Pay

Each employee in the classification of Police Officer or Police Sergeant, who is assigned by the Chief of Police to perform, and does perform, the duties of a Training Officer shall receive an amount equivalent to a one-step increase under the biweekly pay plan during each biweekly period of such assignment, in addition to the salary fixed and established for said ~~class title and number~~ classification.

III. Replace with "Employee Services" with "Human Resources".

5.2.9 Bilingual Pay

5.2.9.1 The employee is or was selectively certified for a position which has been approved by the Director of ~~Employee Services~~ Human Resources for selective certification based on Spanish-English bilingual ability or Vietnamese-English bilingual ability and is currently assigned to such position, or

5.2.9.2 The duties currently assigned to an employee and/or currently being performed by an employee require utilization of Spanish and/or Vietnamese on a regular basis, to be determined and approved by the Director of ~~Employee Services~~ Human Resources

IV. Add "." after "plans".

8.2 Dental Plan

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

V. Replace "Employee Services" with "Human Resources".

8.2 Dental Plan

8.2.1 Copies of each plan document shall be available upon request in the ~~Employee Services~~ Human Resources Department.

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

VI. Remove "Effective the first pay period of payroll calendar year 2006"

8.2.2 ~~Effective the first pay period of payroll calendar year 2006, the~~The City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents.

VII. Replace "Employee Services" with "Human Resources".

8.3.3 To qualify, an employee must provide proof of alternate group coverage to ~~Employee Services~~Human Resources.

VIII. Replace "Employee Services" with "Human Resources."

8.3.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period or within thirty (30) days of a qualifying event (as defined in the ~~Employee Services~~Human Resources Benefit Handbook) occurring anytime during the year.

IX. Replace "Department Director" with "Chief of Police".

12.1 Upon specific assignment by the ~~Department Director~~Chief of Police, or his/her designated representative, an employee may be required to perform the duties of a higher classification.

X. Replace "Professional Standards and Conduct Unit" with "Internal Affairs".

15.1 Employees assigned to the sections noted herein and who are regularly required to perform standby duty shall be eligible for standby compensation in accordance with 15.3.

1. The Sexual Assault Investigations Unit.
2. The Homicide Detail
3. The Crime Scene Units
4. The Bomb Squad
5. Air Surveillance (See Section 5.2.8)
6. ~~Professional Standards and Conduct Unit~~Internal Affairs

XI. Replace "I" with "1".

15.3 Such compensation shall be provided as set forth in Section ~~13.6~~13.6 of this Article.

XII. Replace "Manager" with "Director".

17.1.2 In the event the matter is not resolved by the Assistant Chief or his/her specifically designated representative, the employee may within five (5) working days of the receipt of the Assistant Chief's decision appeal to the Employee Relations ~~Manager~~Director by submitting a written request for review. Within ten (10) working days following the receipt of the written request for review, the Employee Relations ~~Manager~~Director or designee shall hold a meeting with the employee and/or the appropriate employee Organization representative. A written decision shall be given to the employee and/or the appropriate employee representative within five (5) working days following such meeting.

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

XIII. Replace "Employee Services" with "Human Resources".

- 22.3.2 Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of ~~Employee Services~~Human Resources.

XIV. Replace "Employee Services" with "Human Resources".

- 22.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the reinstatement eligible list, providing, however, that such person within the two-year period specified herein may request that his/her name be replaced on the reinstatement eligible list and such person's name may, in the sole discretion of the Director of ~~Employee Services~~Human Resources, be returned to the reinstatement eligible list.

XV. Replace "Department Director" with "Chief of Police".

- 26.6 Any employee who is absent without notification to his/her ~~Department Director~~Chief of Police, 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.

XVI. Replace "Employee Services" with "Human Resources".

- 31.1.2 Immediate family shall be limited to the eligible employee's mother, father, spouse, Domestic Partner registered with the ~~Employee Services~~Human Resources Department, child, stepfather, stepmother or step child.

XVII. Replace "Employee Services" with "Human Resources".

- 31.1.3 Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of ~~Employee Services~~Human Resources or his/her designated representative following the notification referred to above.

XVIII. Replace "Employee Services" with "Human Resources".

- 31.1.5 If an employee is no longer entitled to disability leave, then the ~~Employee Services~~Human Resources Director shall evaluate the prospects of the employee's return to work and shall have reasonable discretion to authorize use of sick leave; provided that in no event shall the employee receive an amount, including any workers' compensation temporary disability payments, in excess of his/her regular base pay

XIX. Replace "Department Director" with "Chief of Police", "Employee Services" with "Human Resources" and add an "e" to the end of "therefor".

- 31.1.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he/she or she, or someone on his/her or her behalf, notifies his/her or her immediate superior or ~~Department Director~~Chief of Police, or the Director of ~~Employee Services~~Human Resources, of his/her or her intent to take such sick leave, and of the reasons therefore, prior to or within one hour after the commencement of the sick leave provided, however, that the City Manager may

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wave the requirement of such notice upon presentation of a reasonable excuse of such employee.

XX. Replace "Finance" with "Human Resources".

32.8 No employee shall be entitled to any compensation or other benefits under the provisions of this Article unless the Director of ~~Finance~~Human Resources shall have determined that such employee is entitled to such compensation or benefits.

XXI. Replace "Finance" with "Human Resources".

32.9 The Director of ~~Finance~~Human Resources 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 his/her employment with the City, proof of the disability and of its duration, and proof of any other relevant matters.

XXII. Replace "Finance" with "Human Resources".

32.10 The Director of ~~Finance~~Human Resources 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.

XXIII. Replace "Finance" with "Human Resources".

32.11 Also, in the event the Director of ~~Finance~~Human Resources 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 1 or Division 4 of said Labor Code, then in that event, the determination of said Director shall become null and void and the City shall be entitled to reimbursement for all monies, if any, theretofore paid by the City to said employee for or because of said injury and absence.

XXIV. Replace "Employee Services" with "Human Resources".

33.1.1 A domestic partner, as referenced in Section 33.1, must be the domestic partner registered with the Department of ~~Employee Services~~Human Resources.

XXV. Capitalize "city".

Article 40 PROMOTIONAL TESTING

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Promotional testing shall be subject to the terms and conditions of a separate Memorandum of Agreement between the City of San Jose and the San Jose Police Officers' Association.

XXVI. Replace “,” with “.”

48.5.4.1 At the conclusion of the Academy all Recruit positions will be eliminated.

XXVII. Replace “0” with “)”.

48.5.4.2 Any Recruit who has successfully completed the Academy but has not been promoted to the classification of Police Officer solely because he or she is not field ready due to a temporary disability or other medical reason shall be placed on unpaid medical leave during the period of disability, up to a maximum of one (1) year from the end of the Academy.

XXVIII. Replace “Employee Services” with “Human Resources”.

52.2 The tests shall be carried out in the manner described by, and consistent with, the City's ~~Employee Services~~ Human Resources Department Drug Testing Procedures and the “Substance Abuse Program” that the City has with the San Jose Police Officers' Association (Exhibit II).

XXIX. Remove “Effective January 1, 1995”.

52.10 ~~Effective January 1, 1995,~~ The City will comply with the new Federal regulations requiring random drug and alcohol testing for employees in positions that require special driver's licenses.

XXX. Replace “Employee Services” with “Human Resources”.

53.2.6 Approval to Receive Donations

The ~~Employee Services~~ Human Resources Department will review any CITD request submitted and determine whether the process of donation of paid leave may proceed based on the provisions of this section. The City's physician will review documentation of the employee's or eligible family member's medical condition, in consultation with the treating physician, and determine whether or not the condition meets the medical criteria of a catastrophic illness or injury. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the ~~Employee Services~~ Human Resources Department.) No donations will be accepted until the City's physician has qualified the recipient's or his/her family member's condition as medically catastrophic, and the ~~Employee Services Department~~ Human Resources has verified that all other criteria are met. When CITD designation has been approved, a donation form specifically for the ill or injured employee will be created by ~~Employee Services~~ Human Resources. The CITD form shall not be distributed prior to specific case approval. The employee or his/her Department Director will designate a CITD Liaison to distribute donation forms and facilitate the acceptance of donated time after CITD designation has occurred.

53.2.7 Approval to Make Donations

Donations cannot be made until the ~~Employee Services~~ Human Resources Department has determined that the intended recipient employee is eligible to receive donations. The employee

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or his/her Department Director will designate a CITD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

53.2.10 Method of Converting Donated Hours

Donations may be made in 1/2-hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the ~~Employee Services~~Human Resources Department on which the donor specifies the number of hours to be donated.

53.3.5 Approval to Receive Donations

The ~~Employee Services~~Human Resources Department shall be provided with medical verification that the employee's condition will require more than thirty consecutive calendar day absence from work. The City reserves the right to request additional medical verification. No donations will be accepted until the ~~Employee Services~~Human Resources Department has received this medical documentation and all other criteria are met. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the ~~Employee Services~~Human Resources Department).

53.3.6 Approval to Make Donations

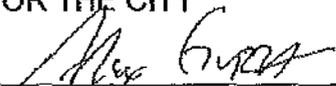
Donations cannot be made until the ~~Employee Services~~Human Resources Department has received medical verification that the employee's illness or injury will require at least a thirty (30) consecutive calendar day absence from work.

53.3.8 Method of Converting Donated Hours

Donations may be made in 1/2 hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the ~~Employee Services~~Human Resources Department which specifies the number of hours to be donated.

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

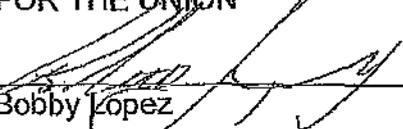


Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

2/14/08

Date

2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL #7

Proposed Language

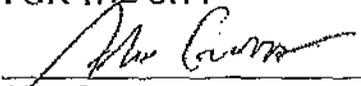
ARTICLE 8 INSURANCE BENEFITS

8.1.6 Effective January 1, 2009, co-pays for all available HMO plans shall be as follows:

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

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FOR THE CITY

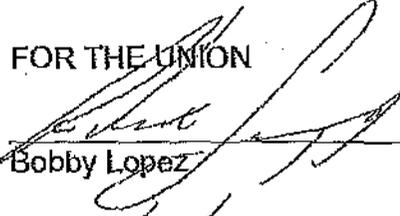


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**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
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CITY PROPOSAL #6

Proposed Language

ARTICLE 8 INSURANCE BENEFITS

8.1 Health Insurance Coverage

8.1.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents.

~~8.1.2 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 \$25.00 per month. Any additional amount above the cost of the lowest priced plan, less \$25.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.~~

~~8.1.3 Effective the first pay period of payroll calendar year 2006, 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 \$50.00 per month. Any additional amount above the cost of the lowest priced plan, less \$50.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.~~

~~8.1.4 Effective the first pay period of payroll calendar year 2007, 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 \$100.00 per month. Any additional amount above the cost of the lowest priced plan, less \$100.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.~~

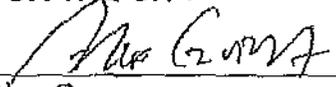
~~8.1.5 8.1.2 Effective the first pay period of payroll calendar year 2008, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up 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.~~

8.1.3 Effective the first pay period of payroll calendar year 2009, the City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

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FOR THE CITY

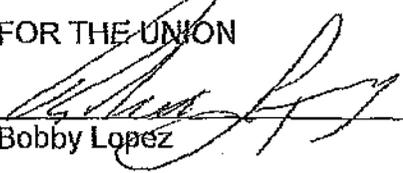


Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

02/14/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #4

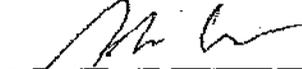
Proposed Language

ARTICLE 8 INSURANCE BENEFITS

~~8.12 Possible addition of vision coverage to the City's overall insurance program shall be referred to the Benefits Review Forum for evaluation. No program will be implemented prior to an opportunity for the Association to meet and confer.~~

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FOR THE CITY

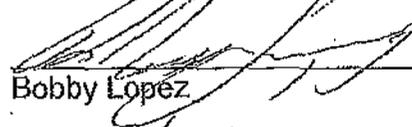


Alex Gurza

2-14-08

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FOR THE UNION



Bobby Lopez

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Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
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CITY PROPOSAL #8

Proposal

Remove Exhibit II, Substance Abuse Policy. City Policy Manual Section 1.4.2 will apply to employees represented by the POA.

52.2 The tests shall be carried out in the manner described by, and consistent with, the City's Employee Services Department Drug Testing Procedures and the "Substance Abuse Program" that the City has with the San Jose Police Officers' Association (Exhibit II). Substance Abuse Program & Policy (City Policy Manual, Section 1.4.2) These documents are hereby incorporated herein by reference.

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

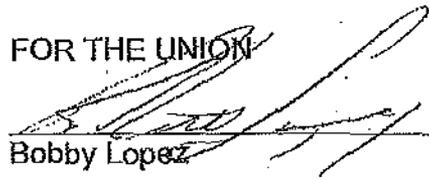


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**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
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EXHIBIT II
SUBSTANCE ABUSE PROGRAM

The purpose of the Substance Abuse Program is to provide guidelines for self-referral and rehabilitation options for employees that may be experiencing a problem with alcohol and/or drug use as well as "for cause" alcohol/drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees.

It is the policy of the City of San Jose to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San Jose.

Application

A. Personnel

1. Full time and permanent, benefited part time employees represented by: San Jose Police Officers' Association.

B. Substances

1. alcohol;

2. illegal drugs; and

3. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

Policy

It is the policy of the City that employees:

shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;

while on duty shall not use, possess, sell or provide drugs or alcohol;

shall not have their ability to work or be paid stand-by impaired as a result of the use of alcohol or drugs.

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~~An employee is required to notify his/her supervisor when any medications or drug he/she is taking create an unsafe and dangerous situation.~~

~~In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.~~

~~The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Employee Services for additional information.~~

~~Employees reasonably believed to be under the influence of alcohol or drugs, as described under the Management Responsibilities and Guidelines Section, paragraph B, shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.~~

~~Violations of this policy shall be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination which alone will form a basis for discipline.~~

Employee Responsibilities

An employee must:

~~A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;~~

~~B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;~~

~~C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;~~

~~D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a department director and may request union representation;~~

~~E. notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and~~

~~F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.~~

Management Responsibilities and Guidelines

~~A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits~~

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~~a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.~~

~~B. A department director or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.~~

~~For example, any of the following, alone or in combination, may constitute reasonable suspicion:~~

- ~~1. A pattern of documented abnormal or erratic behavior;~~
- ~~2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and the Union;~~
- ~~3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);~~
- ~~4. A work related accident in conjunction with other facts which together support reasonable cause.~~

~~C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to requesting an employee to submit to a drug and/or alcohol analysis. If the employee requests union representation, the employee will be allowed the opportunity to secure such representation. If an employee believes an employee not under his supervision has a problem and should be tested or referred, he/she should contact the Office of Employee Relations (OER) who will notify the Department Director or authorized representative. Should the Department Director or authorized representative concur that the employee appears to be in violation of the policy, the following procedures shall immediately be applied:~~

- ~~1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs. This information shall be stated on the Investigation Documentation Memorandum (IDM).~~
- ~~2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Health Services or after-hours facility where a drug and/or alcohol test will be requested.~~
- ~~3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.~~
- ~~4. Managers and supervisors shall not physically search employees.~~
- ~~5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.~~

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~~6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.~~

~~7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.~~

~~D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. The employee's decision to attend or not attend follow up sessions shall be voluntary.~~

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

F. Results of Drug and/or Alcohol Analysis:

~~1. Upon a negative result, the employee shall return to work if otherwise fit for duty.~~

~~2. If the test result is positive, the following shall apply:~~

~~First Offense: In an effort to encourage the employee to take responsibility for his/her problem, first violation of this policy will result in a formal, mandatory referral to the Employee Assistance Program (EAP), using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. EAP will assess the employee's need for treatment. An employee declining to be evaluated by EAP may be subject to disciplinary action independent of any other misconduct. Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty (30%) percent of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby or any action constituting a violation of this policy will continue to be subject to discipline, subject to applicable due process for City employees.~~

~~3. Second Offense: During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost.~~

~~4. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.~~

Confidentiality

~~Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a department director or authorized representative and Employee Services Director on a strictly need to know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee; (2) the information is to be~~

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used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by the City's Employee Health Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels defined in the City of San Jose Substance Abuse Program and Policy Drug Minimum Detection Levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment

The City will make substance abuse treatment available to employees represented by the San Jose Police Officers' Association in the following way:

1. Self Referral

A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at EAP.

B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The EAP will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.

C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

2. Formal Referrals

A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the EAP and define issues.

B. The employee will be advised to go to the EAP for evaluation. Any participation in treatment is voluntary.

C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

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- ~~A. If an employee tests positive on a drug test the department director or authorized representative will contact the EAP and initiate a formal referral. An evaluation by the EAP is mandatory. Participation in treatment is voluntary.~~
- ~~B. The employee will sign a release allowing the EAP to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.~~

4. Settlement of a Proposed Discipline

- ~~A. If an employee has received a Notice of Intended Discipline (NOID) for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.~~
- ~~B. The specific terms of the agreement are determined on a case by case basis. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.~~

5. Funding

- ~~The employee will pay thirty (30%) percent of treatment costs for a plan approved by the EAP for the employee. The city will pay the remainder of the cost, which is not covered by the employee's health insurance for one treatment.~~

Substance Abuse Program & Policy**1.4.2****PURPOSE**

It is the policy of the City of San José to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job), which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce.

This policy provides guidelines for self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use and for-cause alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San José.

APPLICATION**A. Personnel**

- a. Full-time and permanent, benefited part-time employees in the following units:
 - i. Unit 99
 - ii. Association of Engineers and Architects (AEA), IFPTE, Local 21
 - iii. City Association of Management Personnel (CAMP)
 - iv. Association of Maintenance Supervisory Personnel (AMSP)
 - v. International Association of Firefighters, Local 230 (IAFF)
 - vi. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
 - vii. San Jose Police Officers' Association (SJPOA)
 - viii. All Unrepresented employees
- b. Unbenefited employees are subject to all rules and responsibilities of this policy, exclusive of benefits provided by applicable MOA/Compensation Summary. Please see applicable MOA/Compensation Summary for information regarding benefits.

**FOR ALL OTHER BARGAINING UNITS, PLEASE SEE BACK OF MOA
FOR APPLICABLE SUBSTANCE ABUSE POLICY.**

B. Substances

- a. alcohol;
- b. illegal drugs; and
- c. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

Substance Abuse Program & Policy**1.4.2****POLICY**

It is the policy of the City that employees:

- shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- while on duty shall not use, possess, sell or provide drugs or alcohol;
- shall not have the ability to work or be on paid stand-by when impaired as a result of the use of alcohol or drugs.

An employee is required to notify his/her supervisor when any medications or drug he/she is taking could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties when using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Human Resources for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy should be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination, which alone will form a basis for discipline.

RESPONSIBILITIES**Employee Responsibilities:**

- A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;
- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;

Substance Abuse Program & Policy**1.4.2**

- D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a department head and if in a bargaining unit, may request Union representation;
- E. notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

Management Responsibilities and Guidelines:

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A department head or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- 1. A pattern of documented abnormal or erratic behavior;
 - 2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and if employee is in a bargaining unit, the Union;
 - 3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
 - 4. A work related accident in conjunction with other facts which together support reasonable cause.
- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to directing an employee to submit to a drug and/or alcohol analysis. If the employee is in a bargaining unit and requests Union representation, the employee will be allowed the opportunity to secure such representation. The process for directing an employee to submit to a drug and/or alcohol test is outlined below (numbers 1 - 7).

Substance Abuse Program & Policy**1.4.2**

Additionally, if an employee believes an employee not under his/her supervision has a problem and should be tested or referred, he/she should contact the **Office of Employee Relations** who will notify the department director. Should the department head concur that the employee appears to be in violation of the policy, the following procedure shall immediately be applied shall also apply:

1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Medical Services or emergency room where a drug and/or alcohol test will be requested. If the incident occurs at other times when EHS is closed, contact:

Independent Toxicology Services
Phone: (408) 244-0861
After Hours: (408) 274-0696
After Hours Alt 1: (408) 205-3071
After Hours Alt 2: (408) 202-9582

They will arrange for the testing to occur at their office at 20 Harold Drive, Suite 32, San Jose. After using this service, please notify EHS at the first available opportunity. Independent Toxicology Services is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon direction shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
 4. Managers and supervisors shall not physically search employees.
 5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession.
 6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
 7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.
- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

Substance Abuse Program & Policy**1.4.2**

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

F. Results of Drug and/or Alcohol Analysis:

1. Upon a negative result, the employee shall return to work if otherwise fit for duty. All records and documentation shall be purged.
2. If the test result is positive, the following shall apply:

First Offense:

In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct.

Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty percent (30%) of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby or any action constituting a violation of this policy will continue to be subject to discipline, subject to applicable due process for City employees.

Second Offense:

During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

Confidentiality:

Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a department head and Human Resources Director on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee, including employee discipline; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Substance Abuse Program & Policy**1.4.2****Procedure: Drug Testing**

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by Employee Medical Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment:

The City will make substance abuse treatment available to employees in the following way:

1. **Self Referral**
 - A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at **EAP**.
 - B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The **EAP** will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
 - C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.
2. **Formal Referrals**
 - A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the **EAP** and define issues.
 - B. The employee will be advised to go to the **EAP** for evaluation. Any participation in treatment is voluntary.
 - C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.
3. **Positive Drug Test**
 - A. The first time an employee tests positive on a drug test, the department head will contact the **EAP** and initiate a formal referral. An evaluation by the **EAP** is mandatory. Participation in treatment is voluntary.
 - B. The employee will sign a release allowing the **EAP** to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

Substance Abuse Program & Policy**1.4.2**4. Settlement of a Proposed Discipline

- A. If an employee has received a Notice of Intended Discipline for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.
- B. The specific terms of the agreement are determined on a case-by-case basis, including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.

5. Funding

The employee will pay 30% of treatment costs for a plan approved by the EAP for the employee.

The City will pay the remainder of the cost, which is not covered by the employee's health insurance for one treatment.

Approved:

/s/ Alex Gurza
Director of Employee Relations

1/08/08
Date

Substance Abuse Program & Policy**1.4.2****City of San José
Substance Abuse Program****SCOPE OF SERVICES**

1. Provide gatekeeping and case management chemical dependency problems of employees. This service is to include assessment, referral to high quality treatment facilities, precertification, and post-treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

COMPONENTS**1. Assessment**

Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. EAP will provide a clinical assessment for the most appropriate level of treatment. (see Tracks A, B, C). Treatment options include:

Structured Inpatient Program: Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service, which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

Structured Outpatient Program: Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Alanon: When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at EAP may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral

Criteria have been developed at EAP to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to insure that the most cost effective recommendations are made. Referrals are made to quality programs to insure the best chance of success.

Substance Abuse Program & Policy**1.4.2****3. Pre-certification**

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Human Resources/Benefits Division. The section on Gatekeeping Procedures outlines the steps **EAP** will take in this process.

4. Case Management

EAP counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team
- Continued counseling with client and family as necessary after discharge from treatment facility for one year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both
- Treatment aftercare program
- **EAP** case management for up to a year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

Treatment will be covered if it is provided by one of **EAP**'s recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

Substance Abuse Program & Policy**1.4.2****6. Tracks**

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

TRACK A: Assessment at EAP and Referral to Treatment facility

- A. Client is assessed at EAP with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Human Resources/Benefits Division.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
 2. The program should contact City of San José Human Resources/Benefits Division to confirm eligibility.
- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
- a. Treatment facility
 - b. City of San José Human Resources/Benefits Division
 - c. Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
 - Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
 - Keep in contact on a weekly basis via telephone or letter.
 - Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact EAP therapist for appointment and that there are resources available to the employee via the Union, if employee is in a bargaining unit, or the EAP.

Substance Abuse Program & Policy**1.4.2**

- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six months. Monitor the client's progress and participation in aftercare. (EAP will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and EAP case management, or:
 - a. If the client fails to attend aftercare.
 - No more than 2 unexcused absences.
 - Reasons for non-attendance must be cleared through EAP therapist.
 - b. Failure to attend follow-up counseling with EAP as agreed upon with their counselor.
- I. Notify City of San José Human Resources/ Benefits Division and the client, in writing, when the "treatment program" is terminated or completed.

TRACK B: Emergency Admission to Treatment Facility

- A. Employee presents to a treatment facility. Facility calls City of San José Human Resources/Benefits Division to determine eligibility and coverage.
- B. City of San José Human Resources/Benefits Division will confirm eligibility and notify the facility that authorization is required through EAP beyond the initial 48-hour period of coverage.
- C. EAP will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
 - the treatment facility is an EAP recommended facility, authorization will be given as outlined in Track A.
 - the treatment facility is not an EAP recommended facility, EAP will facilitate a transfer to a recommended facility.
- E. If outpatient treatment is recommended and client agrees with the treatment course, EAP will facilitate the referral and authorize as indicated in Track A.

TRACK C: Second Treatment

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by EAP. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

Substance Abuse Program & Policy**1.4.2****RECOMMENDED TREATMENT PROGRAM**

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost.

EAP will assist in the negotiation of preferred provider rates at the City's request.

The City of San José will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San José each month the contracted rate per covered employee for all gatekeeping services. The City of San José will be responsible for the cost of all recommended treatment services for covered employees.

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #3

Proposed Language

ARTICLE 1 TERM

~~4.2 — This agreement is premised on the parties' mutual belief that they have the power to independently contract for retirement benefit changes, even if those retirement benefit changes differ from those eventually negotiated or awarded to employees exclusively represented by IAFF, Local 230. In the event that the parties are required to participate in a separate "tripartite" arbitration process covering retirement benefits during the term of this MOA, the parties agree as follows:~~

~~(a) If the POA and IAFF, Local 230 are required to make a "Joint Proposal":~~

~~1) The POA will not agree to make any "Joint Proposal" that includes any benefit change other than the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006; and~~

~~2) The City's proposal will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006.~~

~~(b) If the POA and IAFF, Local 230 are permitted to make separate proposals and be awarded separate benefits and the City is permitted to make separate proposals to POA and IAFF, Local 230:~~

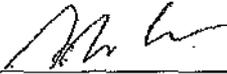
~~1) The POA's proposal will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006; and~~

~~2) The City's proposal to POA will consist solely of the "4% after 20 years" benefit set forth in Article 49 with an effective date of July 1, 2006. This provision is not intended to limit the City's ability to make different proposals to IAFF, Local 230.~~

~~In the event that neither of the foregoing occur, the parties will meet and confer over how to proceed and will not proceed to a "tripartite" arbitration process covering retirement benefits until they have reached an agreement regarding how to proceed.~~

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

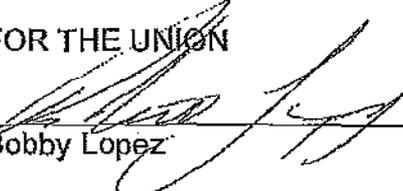


Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

02/14/08

Date

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL #9

Proposed Language

ARTICLE 53 TIME DONATION PROGRAMS

Employees may donate time to eligible employees as outlined in the Time Donation Programs Section in the City Policy Manual. AS of JUNE 1, 2007.

~~53.1 Employees may donate accrued vacation and/or compensatory time for credit to another full-time or part-time benefited City employee who qualifies for the Catastrophic Illness Program (CITD) or the Personal Illness Time Donation Program (PITD) as per the appropriate Memorandum of Agreement. Such donations may be made in accordance with the CPM section regarding Time Donation Programs and the following:~~

~~53.2 Catastrophic Illness Time Donation (CITD):~~

~~53.2.2 Eligibility to Receive Donations~~

~~This section shall apply when an eligible City employee must be absent from work for an extended period of time due to a non-job related illness or injury which is medically catastrophic (e.g., the illness/injury is extremely serious, totally incapacitating, and life-threatening) and the employee has exhausted all paid leave and meets all criteria listed below. CITD leave may be considered leave under the Family Medical Leave Act and/or the California Family Rights Act:~~

- ~~a. The employee is an active employee (full or part time benefited) who is eligible for paid leave, and;~~
- ~~b. The employee has exhausted all paid leave (personal leave, sick leave, vacation, compensatory time and executive leave) or will have exhausted all paid leave by the time donations can be processed, and either;~~
- ~~c. The employee experiences a non-job related catastrophic illness or injury, which has required him or her to be absent for a period of thirty (30) consecutive or cumulative days or more, within the previous six (6) months. The expected condition and term of absence must be verified by the City's physician in consultation with the employee's treating physician, or;~~
- ~~d. The eligible employee must show the need to care for an eligible family member who is catastrophically ill. Eligible family members are defined as:~~
 - ~~1) A legal spouse or a registered Domestic Partner and is receiving City health benefits~~
 - ~~2) A person under 18 years of age, or a person incapable of self-care because of a physical or mental disability who is a biological, adopted, foster or step child, or a ward of the employee~~

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
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3) A person for whom the employee is charged with a parent's legal rights, duties and responsibilities.

53.2.3 Criteria for Donating Time

To be eligible to donate hours, an employee must meet all of the following criteria:

a. The donor must have sufficient accrued compensatory and/or vacation time to cover the requested transfer

b. City employees may voluntarily donate accrued vacation and/or compensatory time either:

1) to a specific eligible employee or

2) to a non-specified eligible employee to be utilized by any eligible employee should the need arise

53.2.4 Relationship to Salary Continuation (Long Term Disability) Insurance

Voluntary donations of paid leave are intended to assist the seriously ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long term disability) or the SJPOA Insurance and Benefits Trust, donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.

53.2.5 Excess Donated Time

Donated time will be processed in increments of no more hours than the employee can use in a three month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations may not be revoked.

53.2.6 Approval to Receive Donations

The Employee Services Department will review any CITD request submitted and determine whether the process of donation of paid leave may proceed based on the provisions of this section. The City's physician will review documentation of the employee's or eligible family member's medical condition, in consultation with the treating physician, and determine whether or not the condition meets the medical criteria of a catastrophic illness or injury. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Employee Services Department.) No donations will be accepted until the City's physician has qualified the recipient's or his/her family member's condition as medically catastrophic, and the Employee Services Department has verified that all other criteria are met. When CITD designation has been approved, a donation form specifically for the ill or injured employee will be created by Employee Services. The CITD form shall not be distributed prior to specific case approval. The employee or his/her Department Director will designate a CITD Liaison to distribute donation forms and facilitate the acceptance of donated time after CITD designation has occurred.

53.2.7 Approval to Make Donations

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

~~Donations cannot be made until the Employee Services Department has determined that the intended recipient employee is eligible to receive donations. The employee or his/her Department Director will designate a CTD Coordinator to distribute donation forms and facilitate the acceptance of donated time.~~

53.2.8 Maximum Donation

~~A recipient employee is eligible to receive a total maximum of 1040 hours of donated leave time during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for Part-time benefited employees.~~

~~If an eligible employee exhausts the maximum 1040 hours of donated leave and if the employee's or eligible family member's catastrophic illness or injury prevents the employee from returning to work, the employee or the employee's designee may apply for an increase to the maximum to 2080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through the Office of Employee Relations. The application shall include a recommendation from the Department Director and shall be evaluated based upon the operational impact on the employee's department and subject to the re-verification of the medical condition to determine if the illness or injury still qualifies and prevents the employee from returning to work. The decision of the City Manager regarding an application of an increase to the maximum donated leave is final and is not subject to appeal.~~

53.2.9 Donations to Non-Specified Employee(s)

~~Donations to a non-specified employee can be made at any time. Donations designated as non-specified will not be deducted from the donor employee's compensatory and/or vacation leave balances until such time as they have been awarded to an eligible employee. The donation is to be rescinded if donated hours are not converted before the end of pay period 24 of each payroll calendar year. Donor employees may elect to have their unused person-to-person donations designated as non-specific employee donations. Employees requesting donations established as non-specific employee donations shall be utilized on a first come, first served basis. Employees are required to exhaust all of their person-to-person time donations before being eligible for non-specific employee donations.~~

53.2.10 Method of Converting Donated Hours

~~Donations may be made in 1/2-hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Employee Services Department on which the donor specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2-hour, based on the recipient's current pay rate.~~

53.2.11 Confidentiality

~~Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential.~~

**2008 CITY OF SAN JOSE -- POA NEGOTIATIONS
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except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

53.3 ~~Personal Illness/Injury Time Donation (PITD):~~

53.3.1 Eligibility to Receive Donations

~~This section shall apply when an eligible City employee must be absent from work due to a non-job related personal illness or injury and the employee has exhausted all paid leave. Employees are eligible for donations for absences of at least one (1) day, up to a maximum of thirty (30) consecutive calendar days immediately following an initial absence of at least thirty (30) consecutive calendar days. Donations to eligible employees under the PITD are limited to no more than what the employee can use in a one month period (maximum of twenty-two (22) working days) for the same qualifying illness or injury. PITD leave may be considered Family Medical Leave under the Family Medical Leave Act (FMLA). The employee must be an active employee (full or part-time benefited) who is eligible for paid leave. The employee must have exhausted all accrued paid leave (sick leave, vacation, compensatory time, personal leave and executive leave) or will have exhausted all paid leave by the time donations can be processed. Employees who have received donations under the PITD program must wait at least one calendar year before reapplying for PITD donations. The City reserves the right to deny PITD requests.~~

53.3.2 Criteria for Donating Time

~~City employees will be able to voluntarily donate accrued vacation and/or compensatory time for transfer to another eligible employee in situations that meet all of the following criteria;~~

- ~~a. The donor is an active employee (full or part-time benefited) who is eligible for paid leave.~~
- ~~b. The donor has sufficient accrued compensatory or vacation time to cover the requested transfer.~~

53.3.3 Relationship to Salary Continuation (Long-Term-Disability) Insurance

~~Voluntary donations of paid leave are intended to assist the ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long-term disability) or the SJPOA Insurance and Benefits Trust, donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.~~

53.3.4 Excess Donated Time

~~Donated time will be processed in increments of no more hours than the employee can use in a one month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations transferred to the recipient's sick leave balance may not be revoked.~~

**2008 CITY OF SAN JOSE -- POA NEGOTIATIONS
TENTATIVE AGREEMENT**

53.3.5 Approval to Receive Donations

The Employee Services Department shall be provided with medical verification that the employee's condition will require more than thirty consecutive calendar day absence from work. The City reserves the right to request additional medical verification. No donations will be accepted until the Employee Services Department has received this medical documentation and all other criteria are met. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Employee Services Department).

53.3.6 Approval to Make Donations

Donations cannot be made until the Employee Services Department has received medical verification that the employee's illness or injury will require at least a thirty (30) consecutive calendar day absence from work. The employee or his/her Department Director will designate a PTD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

53.3.7 Maximum Donation

A recipient employee is eligible to receive a total maximum donation of leave of the total number of hours that the recipient employee can use in a one month period during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for Part-time benefited employees.

53.3.8 Method of Converting Donated Hours

Donations may be made in 1/2 hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Employee Services Department which specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2 hour, based on the recipient's current pay rate.

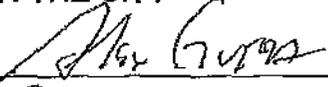
53.3.9 Confidentiality

Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential, except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

**2008 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT**

**This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY

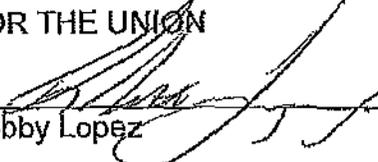


Alex Gurza

2-14-08

Date

FOR THE UNION



Bobby Lopez

02/14/08

Date

Time Donation Programs**Section 4.2.10****PURPOSE**

The City recognizes that situations may arise when an employee suffers a prolonged or catastrophic illness or injury necessitating extended absence from work for which the employee has not accumulated sufficient paid leave. When the employee exhausts all paid leave, other employees may desire to assist by donating a portion of their own earned vacation and/or compensatory time to their coworker. The City's Time Donation programs allow employees to donate earned vacation and/or compensatory time to another employee who has the need for such time because of a prolonged or catastrophic medical condition.

AUTHORITIES

If applicable Memoranda of Agreement (MOA) includes a Catastrophic Illness Time Donation (CITD) provision, it will state which full and part-time benefited employees are eligible, and may establish additional eligibility requirements. Applicable MOA will supersede the general provisions in this policy. For those bargaining units without a CITD provision in the MOA, eligibility is defined below.

Employees who are members of the International Association of Firefighters, Local 230, are exempted from the provisions of this policy because they have MOA provisions on CITD that restrict its use to personal illness or injury and does not limit the amount of donated time an employee is eligible to receive. This program shall not supersede the respective MOA. The procedures section of this program shall apply to Local 230 members who request person-to-person time donations for personal catastrophic illness or injury.

CITD POLICY**A. Catastrophic Illness Time Donation (CITD):****1. Eligibility to Receive Donations**

This policy shall apply when an eligible City employee must be absent from work for an extended period of time due to a non-job related illness or injury which is medically catastrophic (e.g., the illness/injury is extremely serious, totally incapacitating, and life-threatening) and the employee has exhausted all paid leave. CITD leave may be considered Family Medical Leave under the Family Medical Leave Act

- a. If applicable Memoranda of Agreement (MOA) contains a CITD provision, it will state which full and part-time benefited employees are eligible. For those bargaining units that do not have a CITD provision in their MOA, eligibility is defined herein.
- b. The employee experiences a non-job related catastrophic illness or injury, which has required him or her to be absent for a period of 30 consecutive or cumulative days or more, within the previous six months. The expected

Time Donation Programs**Section 4.2.10**

condition and term of absence must be verified by the City's physician in consultation with the employee's treating physician.

- c. The eligible employee must show the need to care for an eligible family member who is catastrophically ill. Eligible family members are defined as:
 - 1) A legal spouse or a registered Domestic Partner and is receiving City health benefits
 - 2) A person under 18 years of age, or a person incapable of self-care because of a physical or mental disability who is a biological, adopted, foster or step child, or a ward of the employee
 - 3) A person for whom the employee is charged with a parent's legal rights, duties and responsibilities.
- d. The employee is an active employee (full or part-time benefited) who is eligible for paid leave.
- e. The employee has exhausted all paid leave (personal leave, sick leave, vacation, compensatory time and executive leave) or will have exhausted all paid leave by the time donations can be processed.

2. Criteria for Donating Time

To be eligible to donate hours, an employee must meet all of the following criteria.

- a. The donor must have sufficient earned compensatory and/or vacation time to cover the requested transfer
- b. City employees may voluntarily donate accrued vacation and/or compensatory time either:
 - 1) to a specific eligible employee or
 - 2) to a non-specified eligible employee to be utilized by any eligible employee should the need arise

3. Relationship to Salary Continuation (Long-Term Disability) Insurance

Voluntary donations of paid leave are intended to assist the seriously ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long-term disability) donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.

4. Excess Donated Time

Donated time will be processed in increments of no more hours than the employee can use in a three month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations may not be revoked.

Time Donation Programs**Section 4.2.10****5. Approval to Receive Donations**

- a. The Human Resources Department will review any CITD request submitted and determine whether the process of donation of paid leave may proceed based on the provisions of this policy.
- b. The City's physician will review documentation of the employee's or eligible family member's medical condition, in consultation with the treating physician, and determine whether or not the condition meets the medical criteria of a catastrophic illness or injury.
- c. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Human Resources Department).
- d. No donations will be accepted until the City's physician has qualified the recipient's or his/her family member's condition as medically catastrophic, and the Human Resources Department has verified that all other criteria are met.
- e. When CITD designation has been approved, a donation form specifically for the ill or injured employee will be created by Human Resources. The CITD form shall not be distributed prior to specific case approval.
- f. The employee or his/her department Director will designate a CITD Liaison to distribute donation forms and facilitate the acceptance of donated time after CITD designation has occurred.

6. Approval to Make Donations

Donations cannot be made until the Human Resources Department has determined that the intended recipient employee is eligible to receive donations. The employee or his/her Department Director will designate a CITD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

7. Maximum Donation

- a. A recipient employee is eligible to receive a total maximum of 1040 hours of donated leave time during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for part-time benefited employees.
- b. If an eligible employee exhausts the maximum 1040 hours of donated leave and if the employee's or eligible family member's catastrophic illness or injury prevents the employee from returning to work, the employee or the employee's designee may apply for an increase to the maximum to 2080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through the Office of Employee Relations. The application shall include a recommendation from the Department Director and shall be evaluated based upon the operational impact on the employee's department and subject to the re-

Time Donation Programs**Section 4.2.10**

verification of the medical condition to determine if the illness or injury still qualifies and prevents the employee from returning to work. The decision of the City Manager regarding an application for an increase to the maximum donated leave is final and is not subject to appeal.

8. Donations to Non-Specified Employee(s)

- a. Donations to a non-specified employee can be made at any time.
- b/ Donations designated as non-specified will not be deducted from the donor employee's compensatory and/or vacation leave balances until such time as they have been awarded to an eligible employee. The donation is to be rescinded if donated hours are not converted before the end of pay period 24.
- c. Donor employees may elect to have their unused person-to-person donations designated as non-specific employee donations
- d. Employees requesting donations established as non-specific employee donations shall be utilized on a first come, first served basis. Employees are required to exhaust all of their person-to-person time donations before being eligible for non-specific employee donations.

9. Method of Converting Donated Hours

Donations may be made in 1/2-hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Human Resources Department on which the donor specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2 hour, based on the recipient's current pay rate.

10. Confidentiality

Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential, except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

B. Catastrophic Illness Time Donation (CITD) Procedures

Employee (or employee's family, or representative of employee)

1. Contacts the employee's Department Director to request donations of vacation or compensatory time to be used as sick time due to a catastrophic illness or injury.

Time Donation Programs**Section 4.2.10**Department Director

2. Contacts the Human Resources Director to request initiation of the CITD program on behalf of the ill or injured employee.
3. Appoints a CITD Departmental Coordinator

Employee's Treating Physician

4. Provides information to the City physician to substantiate the catastrophic nature of the employee's medical condition or the medical condition of a qualifying family member.

City Physician

5. Advises the Human Resources Director that the employee's illness or injury either is or is not a catastrophic condition.

Human Resources

6. Approves or disapproves the CITD request, based on determination of City physician and whether or not other CITD program requirements are met, and advises the employee and the employee's Department Director of this approval or denial. For an approved CITD request, Human Resources provides the CITD Coordinator donation forms and instructions, and notifies the employee that donations are being accepted.
7. For non-specified employee donations, holds each donor employee's donation application until such time as any eligible employee will utilize it. Returns unused donation forms in pay period 24. When a donation will be utilized, checks the donor employee's earned leave balances, prepares a summary list of donors and hours donated for vacation and compensatory time and submits to Compensation Accounting.

CITD Coordinator

8. Provides donation forms to anyone who asks, communicates with the employee and coordinates actions as needed.

Each Donor Employee

9. Completes donation form authorizing a specific number of hours to be transferred from earned vacation and/or compensatory time balances, and returns form in a sealed envelope marked "Confidential" to the CITD Coordinator or to the Human Resources Department.

Time Donation Programs**Section 4.2.10**Human Resources

10. Checks each donor employee's earned leave balances, prepares a summary list of donors and hours donated for vacation and compensatory time, and submits to Compensation Accounting.

Payroll

11. Determines the dollar value of each donor's hours, based on the donor's current pay rate; converts dollar value to appropriate paid sick leave hours, based on the recipient's current pay rate; adjusts vacation/comp time balances of each donor; credits the sick leave balance of the recipient, and reports the amount of sick leave credited and date when this sick leave is available for use to Human Resources.

Human Resources

12. Advises the employee of leave availability and of the names of those donors who requested that their names be given to the recipient; advises the employee's Department Director and timekeeper of leave availability (but not of the names of donors).

Departmental Timekeeper

13. Completes timesheets for recipient employee each pay period, designating hours used under the CTD program as sick leave; advises the insurance company of any change to the Timekeeper's Statement for salary continuation (long-term disability) insurance claim, if one was submitted.

PITD POLICY**A. Personal Illness/Injury Time Donation (PITD):****1. Eligibility to Receive Donations**

This policy shall apply when an eligible City employee must be absent from work due to a non-job related personal illness or injury and the employee has exhausted all paid leave. Employees are eligible for donations for absences of at least one (1) day, up to a maximum of thirty (30) consecutive calendar days immediately following an initial absence of at least thirty (30) consecutive calendar days. Donations to eligible employees under the PITD are limited to no more than what the employee can use in a one-month period (maximum of twenty-two (22) working days) for the same qualifying illness or injury. PITD leave may be considered Family Medical Leave under the Family Medical Leave Act (FMLA). Employees who have received donations under the PITD program must wait at least one calendar year before reapplying for PITD donations. The City reserves the right to deny PITD requests.

- a. The employee is an active employee (full or part-time benefited) who is eligible for paid leave.

Time Donation Programs**Section 4.2.10**

- b. The employee has exhausted all accrued paid leave (sick leave, vacation, compensatory time, personal leave and executive leave) or will have exhausted all paid leave by the time donations can be processed.

2. Criteria for Donating Time

City employees will be able to voluntarily donate accrued vacation and/or compensatory time for transfer to another eligible employee in situations that meet all of the following criteria:

- a. The donor is an active employee (full or part-time benefited) who is eligible for paid leave.
- b. The donor has sufficient earned compensatory or vacation time to cover the requested transfer.

3. Relationship to Salary Continuation (Long-Term Disability) Insurance

Voluntary donations of paid leave are intended to assist the ill or injured employee who would otherwise have no regular income. For employees who are covered by the City's group insurance plan for salary continuation (long-term disability), donated leave is treated as sick leave, and is therefore an offset to benefits in accordance with that insurance plan.

4. Excess Donated Time

Donated time will be processed in increments of no more hours than the employee can use in a one month period. In the event the employee returns to work before using all of his/her processed donations, the recipient will retain the excess as sick leave. Donations transferred to the recipient's sick leave balance may not be revoked.

5. Approval to Receive Donations

The Human Resources Department shall be provided with medical verification that the employee's condition will require more than thirty consecutive calendar day absence from work. The City reserves the right to request additional medical verification. No donations will be accepted until the Human Resources Department has received this medical documentation and all other criteria are met. Donated time may not be retroactive (i.e., donated time cannot be applied to any employee absence prior to the date on which the required medical documentation is received by the Human Resources Department).

6. Approval to Make Donations

Donations cannot be made until the Human Resources Department has received medical verification that the employee's illness or injury will require at least a thirty consecutive calendar day absence from work. The employee or his/her Department Director will designate a PITD Coordinator to distribute donation forms and facilitate the acceptance of donated time.

Time Donation Programs**Section 4.2.10****7. Maximum Donation**

A recipient employee is eligible to receive a total maximum donation of leave of the total number of hours that the recipient employee can use in a one (1) month period during their employment with the City. The amount of donated leave available to an employee shall be appropriately prorated for Part-time benefited employees.

8. Method of Converting Donated Hours

Donations may be made in 1/2 hour increments and will be transferred on a dollar-for-dollar basis. Each donor will complete a donation form provided by the Human Resources Department which specifies the number of hours to be donated. The dollar value of the time will be calculated at the donor's current pay rate. This dollar value will then be converted to sick leave hours for the recipient, to the nearest 1/2 hour, based on the recipient's current pay rate.

9. Confidentiality

Donations will be entirely voluntary and confidential. Care will be taken by everyone involved in the process to emphasize the voluntary nature of contributions and to maintain the confidentiality of employee medical information. Names of donors will be kept confidential, except where the donor requests that his or her identity be made known to the recipient. No information regarding the nature of the illness or injury will be divulged to other employees by anyone with access to such information.

B. Personal Illness/Injury Time Donation (PITD) Procedures

Employee (or employee's family, or representative of employee)

1. Contacts the employee's HR Liaison to request donations of vacation or compensatory time to be used as sick time due to a prolonged illness or injury.

HR Liaison

2. Contacts the Human Resources Department to request initiation of the PITD program on behalf of the ill or injured employee.
3. Notifies Department Director of request to receive donations through PITD

Human Resources

4. Upon medical verification, approves or disapproves the PITD request, based on whether or not the illness or injury will prevent the employee from returning to work for more than thirty consecutive calendar days and whether or not the other PITD program requirements are met. Advise the employee and the employee's Department Director of this approval or denial. For an approved PITD request, Human Resources will request designation of a PITD Coordinator by the employee's HR Liaison, provide donation forms and instructions, and notify the employee that donations are being accepted.

Time Donation Programs**Section 4.2.10**PITD Coordinator

5. Provides donation forms to anyone who asks, communicates with the employee and coordinates actions as needed.

Each Donor Employee

6. Completes donation form authorizing a specific number of hours to be transferred from earned vacation and/or compensatory time balances, and returns form in a sealed envelope marked "Confidential" to the PITD Coordinator or to the Human Resources Department.

Human Resources

7. Checks the donor employee's earned leave balances, prepares a summary list of donors and donated vacation and compensatory time hours, and submits to Compensation Accounting.

Payroll

8. When notified by the Human Resources Department that an employee's donation will be utilized, determines the dollar value of each donor's hours, based on the donor's current pay rate; converts dollar value to appropriate paid sick leave hours, based on the recipient's current pay rate; adjusts vacation/comp time balances of each donor; credits the sick leave balance of the recipient, and reports the amount of sick leave credited and date when this sick leave is available for use to Human Resources.

Human Resources

9. Advises the recipient employee of leave availability and of the names of those donors who requested that their names be given to the recipient; advises the employee's Department Director and timekeeper of leave availability (but not of the names of donors).

Departmental Timekeeper

10. Completes timesheets for recipient employee each pay period, designating hours used under the PITD program as sick leave; advises the insurance company of any change to the Timekeeper's Statement for salary continuation (long-term disability) insurance claim, if one was submitted.

Approved:

/s/ Alex Gurza
Director of Employee Relations

6/1/2007
Date