

RESOLUTION NO. 79989

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
APPROVING THE TERMS OF AN AGREEMENT BETWEEN THE
CITY OF SAN JOSE AND THE SAN JOSE POLICE OFFICERS'
ASSOCIATION WITH A TERM OF JULY 1, 2021 THROUGH
JUNE 30, 2022**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the terms of the Agreement between the City of San José and the San José Police Officers' Association (SJPOA), with a term of July 1, 2021 through June 30, 2022, are hereby approved. The City Manager is hereby authorized to execute an Agreement with those terms on behalf of the City.
2. The general terms of the Agreement are set out and described in the Memorandum to the Mayor and City Council dated April 29, 2021, from Jennifer Schembri, Director of Employee Relations, which is attached hereto as Attachment A and incorporated in this Resolution.

ADOPTED this 11th day of May, 2021, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA,
FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ,
LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



Sam Liccardo, Mayor

ATTEST



Toni J. Taber, CMC
City Clerk



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: April 29, 2021

Approved

Date

SUBJECT: APPROVAL OF THE TERMS OF AN AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION (SJPOA) FOR THE TERM OF JULY 1, 2021 THROUGH JUNE 30, 2022

RECOMMENDATION

Adopt a resolution approving the terms of a collective bargaining agreement between the City and the San Jose Police Officers' Association (SJPOA) for the term of July 1, 2021 through June 30, 2022, and authorizing the City Manager to execute the agreement with those terms.

OUTCOME

Adoption of the resolution and authorization to execute an agreement would result in a collective bargaining agreement between the City and the San Jose Police Officers' Association (SJPOA) and authorize the City Manager to execute an agreement with a term of July 1, 2021 through June 30, 2022.

BACKGROUND

The SJPOA represents approximately 1,155 full-time budgeted positions in the San José Police Department and 2 full-time budgeted positions in the City Attorney's Office. This bargaining unit includes employees in the classifications of Police Recruit, Police Officer, Police Sergeant, Police Lieutenant, Police Captain, and Deputy Chief of Police.

On June 25, 2020, the City and the SJPOA agreed to a "roll-over" contract with a one-year term (July 1, 2020, through June 30, 2021), which included a one-time re-opener to meet and confer over compensation increases during the term of the agreement. The agreement also included a re-opener to meet and confer over revisions to the San Jose Police Department policies, procedures and practices to support improved police and community outcomes as part of police reform efforts.

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On November 6, 2020, the SJPOA requested to begin the meet and confer process over compensation increases and, in February 2021, provided the City with a proposal that included compensation increases for Fiscal Year 2020-2021 and Fiscal Year 2021-2022. Over the months that followed the City and the SJPOA engaged in negotiations over the reopener for compensation increases in Fiscal Year 2020-2021, in addition to negotiating over a successor Memorandum of Agreement (MOA). On or about April 27, 2021, the City and the SJPOA reached an overall Tentative Agreement on the terms to be contained in a successor MOA.

The Tentative Agreement on a successor MOA is pending ratification by the SJPOA membership. The SJPOA will notify the City of the ratification results prior to the May 11, 2021, City Council meeting.

ANALYSIS

A complete copy of the Tentative Agreement is attached (Attachment A). The following is a summary of the key provisions of the Tentative Agreement.

Term	The agreement will be effective July 1, 2021 through June 30, 2022.
Pensionable General Wage Increase	<u>Fiscal Year 2020-2021</u> Pursuant to the wage reopener in the current MOA: 3.85% general wage increase effective May 16, 2021, all salary ranges for employees holding positions in classifications assigned to the SJPOA shall be increased by 3.85%. This will result in both the top and bottom step of the pay range being increased by approximately 3.85%. <u>Fiscal Year 2021-2022</u> 3.85% general wage increase effective the first full pay period of Fiscal Year 2021-2022, all salary ranges for employees holding positions in classifications assigned to the SJPOA shall be increased by approximately 3.85%. This will result in both the top and bottom step of the pay range being increased by approximately 3.85%.
One-time Non-Pensionable Lump Sum Bonus	In lieu of receiving a general wage increase retroactive to January 1, 2021, a \$2,000 one-time, non-pensionable lump sum payment shall be made to full-time employees holding positions in classifications assigned to the SJPOA effective May 16, 2021. To receive the one-time, non-pensionable lump sum payment, a full-time employee must have been employed in a SJPOA represented position on January 1,

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2021, and still employed in a SJPOA represented position effective the first full pay period following City Council approval in Open Session.

Unit Designation for Deputy Chiefs

SJPOA agrees not to challenge the Municipal Employee Relations Officer's designation of the position of Deputy Chief of Police to be placed in the management unit of Unit 99.

Effective as soon as practicable after Council approval, all current and future incumbents and positions for the Deputy Chief of Police classification will be re-designated from the SJPOA to Unit 99.

Discipline Arbitration

As part of the Police Reforms Work Plan, Discipline Arbitration provisions of the MOA will be amended to include the following:

- Employees who elect to use the dispute-resolution provisions of the Agreement, as opposed to electing their right to appeal their discipline to the Civil Service Commission, recognize and agree that any resulting arbitrator's award will be published.

The published version of the arbitrator's award will redact the name and any other identifying features of the officer to preserve confidentiality. The opportunity to appeal to the Civil Service Commission shall fulfill the City's obligations to provide an administrative appeal pursuant to Government Code section 3304.

- The Skelly Conference must occur within thirty (30) days of the date the Notice of Intent to Discipline (NOID) with supporting materials is issued by the City. This deadline may only be extended for compelling reasons and upon written mutual agreement of the parties. Unavailability of a particular representative is not a valid reason for an extension beyond this time limitation. The employee has the option of submitting a Skelly response in writing for any reason, including instances where an employee's preferred representative is unavailable within 30 days following the NOID. Failure of the employee and/or their representative to request a Skelly Conference within the specified time limit contained in the NOID and/or to participate in a Skelly Conference or submit a written response within these time limits shall be deemed a waiver of the employee's right to a Skelly Conference and permit the City to proceed directly to the issuance of a final Notice of Discipline (NOD).

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- For disciplinary matters only, the SJPOA shall select two arbitrators from a list of arbitrators who are registered with the California State Mediation and Conciliation Service (CSMCS). The City shall select a total of two arbitrators, one of which will be a retired judge registered with CSMCS, and the other, a Neutral from the Judicial Arbitration and Mediation Service (JAMS). In the event the retired judge from CSMCS is unavailable for more than 60 days, the City may substitute the retired judge with any arbitrator available from either CSMCS or JAMS. If the City selects a JAMS Neutral, the City shall pay any difference in cost between an arbitrator from CSMCS and the JAMS Neutral, if any.

The arbitrators/JAMS neutrals selected by the City and the SJPOA will serve on a disciplinary arbitration panel during the term of this Agreement, and will rotate. Once an arbitrator has been selected by the City or SJPOA and assigned to preside over a particular case, the same arbitrator cannot be assigned a subsequent case until the following arbitrator in the rotation has been assigned a case. By mutual agreement, the City and SJPOA can remove a particular arbitrator from the rotation. If the arbitrator/neutral was chosen by the City, the City may replace that arbitrator/neutral with another panelist from CSMCS or JAMS. If the arbitrator was chosen by the SJPOA, the SJPOA can select another panelist from CSMCS.

Rehired Retiree

The Chief of Police or designee shall determine the Administrative positions/assignments performed by employees in the Rehired Retiree Program, subject to the guidelines in City Administrative Manual Section 3.1.5.

The City and the SJPOA agree to meet and confer over a period not to exceed 60 days from the date the overall tentative agreement for a successor Memorandum of Agreement is signed by all parties and approved by City Council, regarding the process and guidelines for non-administrative assignments.

Modification of Bargaining Unit Work

The City has the discretion to contract out/civilianize the following positions during the term of the Agreement:

- 2 Bureau of Field Operations Administrative positions
- 1 Public Information Officer
- 2 Crime Evidence/Warehouse Officer positions

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- 1 Reserve Unit Officer

The City and the SJPOA further agree that during the term of the Agreement the City has the discretion to contract out/civilianize an additional five (5) positions except positions in patrol, investigations or Internal Affairs. Any discussion regarding the civilianization of positions in patrol, investigations or Internal Affairs will occur separately as part of the Police Reform discussions.

Training

The City will consider implementing trainings identified by SJPOA, if deemed appropriate and practicable by the Chief of Police or designee.

Annual Performance Appraisals

Effective March 2022, the annual performance appraisal rating period will coincide with annual shift change.

Lateral Officer Vacation Accrual Rate

Effective May 16, 2021, the City Manager or designee is authorized to adjust the annual vacation accrual of a Lateral Police Officer, for the purpose of hiring or re-hiring that Officer into City service. This action allows hiring managers to place new or rehired Lateral Police Officers with prior sworn public service credit at a vacation accrual rate commensurate with their total years of sworn public service with the approval of the City Manager or designee.

Compensatory Time

While on a compensatory time reduction plan, employees will be ineligible for any voluntary overtime assignments, unless the overtime is authorized for pay; authorization for paid overtime shall be consistent with Department policy.

Employees who request to use sick leave will be ineligible to work any voluntary overtime assignments the day the sick leave is requested and the immediate day after (24 hours from the start of the shift). In the event that time is worked during this period the employee will receive pay at the 1.0 rate for any hours actually worked.

Letter of Intent (Calls for Service)

The City and the SJPOA agree to continue discussion on sworn response to various types of calls for service, including those identified by the Reimagining Community Safety Advisory Group as part of Police Reforms Work Plan efforts, if they are determined to be suitable to be responded to by non-police officers.

Police Reforms Work Plan Items and

The City and SJPOA agree to continue discussions related to items on the Police Reforms Work Plan, including the Reimagining Community

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**Reimagining
Community Safety
(Side Letter
Agreement)**

Safety work plan item, to identify new ways in which police officers can address social issues and reduce social conflicts that are non-criminal in nature, and identify initiatives and practices to help improve community and police relations.

**Compensatory Time
(Side Letter
Agreement)**

The City of San Jose and the SJPOA agree to continue discussions related to compensatory time off, including, but not limited to; a possible buy down of an employee's outstanding compensatory time balance.

**Early Intervention
System (Side Letter
Agreement)**

The City and the SJPOA will complete the meet and confer process within 90 days of adoption of this agreement, to improve the database that tracks officer pursuits, uses of force, and complaints. The information culled from this data will inform the creation of an improved Early Intervention System that identifies and compares individual officers to standards for each category within their peer group. This Early Intervention System shall not be punitive in nature, but rather shall be used as a continuous improvement instrument to identify officers in need of additional training, mentoring, and/or other assistance to reduce the categorized items to an acceptable level within their peer group.

**Investigations of
Alleged Police Officer
Misconduct (Side
Letter)**

The City and SJPOA agree that during the term of the MOA:

- Any investigative report conducted by Internal Affairs (IA) will be reviewed by the Independent Police Auditor (IPA). Selected investigative reports may also be reviewed by the Office of Employee Relations (OER), at its choosing. For investigations that are not deemed tolled pursuant to the Public Safety Officers' Procedural Bill of Rights (POBR), the investigative report will be provided to the IPA and/or OER no later than 9 months from the date the alleged misconduct was discovered by a person in the Department authorized to initiate an investigation before it is submitted to the IA Commander.
- The IPA and/or OER may provide written requests to the IA investigator in a timely manner, which may include, but is not limited to, requests for IA to interview additional witnesses, ask additional questions, or review an additional issue. The IA investigator must address written requests provided by the IPA and/or OER. The IA investigator must provide an additional opportunity for the IPA and/or OER to review any revisions to the investigative report based on the written requests provided

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by the IPA and/or OER prior to submission of the investigative report to the IA Commander.

- This Side Letter shall allow the IPA and/or IPA staff to be permitted to ask direct questions of a subject or witness officer during an administrative interview. In full compliance with POBR, the parties further agree that an officer is required to answer the Independent Police Auditor's questions just as they are required to answer questions posed by Internal Affairs. The parties acknowledge that the POBR limits the number of interrogators in an administrative interview to no more than two at a time.
- If the City deems it necessary to amend San Jose Municipal Code section 8.04.010 subsection A3 to allow the Chief of Police to delegate authority to the IPA or designated IPA staff to ask questions of a subject or witness officer during an administrative interview, the IPA and IPA staff shall be permitted to ask direct questions of a subject or witness during an administrative interview effective after that amendment is approved by City Council. All interviews and investigations shall be conducted in accordance with POBR.

**Biometric Timeclocks
(Side Letter
Agreement)**

City and SJPOA agree to continue discussions regarding the implementation of biometric timeclocks for sworn employees in the Police Department where operationally possible as determined by the City Manager's Office.

CONCLUSION

It is recommended that the City Council adopt the Administration's recommendation outlined in this memorandum which would allow the City Manager to execute an agreement with the terms of a collective bargaining agreement between the City and the SJPOA with a term effective July 1, 2021, through June 30, 2022.

EVALUATION AND FOLLOW-UP

No further follow-up action with the Council is expected at this time.

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CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the May 11, 2021, City Council Meeting.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

All the position costs in the POA bargaining unit is budgeted in the General Fund and the recommended actions included this memorandum will be funded in the General Fund. The 3.85% general wage increase is recommended to be effective May 16, 2021 and is estimated to cost \$1.2 million through June 30, 2021. In addition, the one-time \$2,000 lump sum non-pensionable payment will cost approximately \$2.3 million. These increased costs will be offset by a decrease in the Salaries and Benefits Reserve in the General Fund; the recommended budget actions will be brought forward for City Council approval on June 22, 2021 as part of the 2020-2021 Year-End budget process.

The ongoing increased cost of the 3.85% general wage increase effective May 16, 2021 is approximately \$7.4 million and the ongoing increased cost of the 3.85% general wage increase effective July 1, 2021 is an additional \$8.7 million. Because of the timing of this agreement, the general wage increase for both 2020-2021 and 2021-2022 are not included in the Police Department Base Budget; recommendations to adjust the Police Department's personal services budget to include these increases will be brought forward through the 2021-2022 Adopted Budget process. These ongoing increases will be factored into the annual development of the 2022-2023 Base Budget.

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.


JENNIFER SCHEMBRI
Director of Employee Relations
Director of Human Resources

For questions, please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachment A – SJPOA Tentative Agreement

**2021 POA NEGOTIATIONS
TENTATIVE AGREEMENT**

TERM

- July 1, 2021 – June 30, 2022

WAGES

- Fiscal Year 2020-2021

Pursuant to the wage reopener in the current Memorandum of Agreement (MOA):

In lieu of receiving a general wage increase retroactive to January 1, 2021, a \$2,000 one-time, non-pensionable lump sum payment shall be made to full-time employees holding positions in classifications assigned to the POA effective the first full pay period following City Council approval in open session. To receive the one-time, non-pensionable lump sum payment, a full-time employee must have been employed in a POA represented position on January 1, 2021, and still employed in a POA represented position effective the first full pay period following City Council approval in Open Session.

3.85% general wage increase effective the first full pay period following Council approval in open session. Effective the first full pay period following Council approval in open session, all salary ranges for employees holding positions in classifications assigned to the POA shall be increased by approximately 3.85%.

- Fiscal Year 2021-2022

3.85% general wage increase effective the first full pay period of Fiscal Year 2021-2022. Effective the first full pay period of Fiscal Year 2021-2022, all salary ranges for employees holding positions in classifications assigned to the POA shall be increased by approximately 3.85%.

UNIT DESIGNATION FOR DEPUTY CHIEF OF POLICE

- Unit Designation for Deputy Chief of Police (See Attached)

DISCIPLINE ARBITRATION

- Discipline Arbitration (See Attached)

REHIRED RETIREE

- Rehired Retiree (See Attached)

MODIFICATION OF BARGAINING UNIT WORK

- Modification of Bargaining Unit Work (See Attached)

TRAINING

- Training (See Attached)

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ANNUAL PERFORMANCE APPRAISALS

- Performance Evaluation (See Attached)

LATERAL OFFICER VACATION ACCRUAL RATE

- Lateral Officer Vacation Accrual Rate (See Attached)

COMPENSATORY TIME

- Compensatory Time (See Attached)

LETTER OF INTENT

- Calls for Service (See Attached)

SIDE LETTERS

- Police Reforms Work Plan Items and Reimagining Community Safety (See Attached)
- Compensatory Time (See Attached)
- Early Intervention System (See Attached)
- Investigations of Alleged Police Officer Misconduct (See Attached)
- Biometric Timeclocks (See Attached)

OTHER TERMS

The terms contained in the Promotional Memorandum of Agreement shall remain status quo with a term of July 1, 2021, to June 30, 2022.

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CITY PROPOSAL– UNIT DESIGNATION FOR DEPUTY CHIEF OF POLICE

City Proposed Language:

After consultation with the POA, the POA agrees not to challenge the Municipal Employee Relations Officer's designation of the position of Deputy Chief of Police to be placed in the management unit of Unit 99.

The unit designation for the Deputy Chief of Police (2219) classification shall be as listed below.

Unit	FLSA Status	Class Title
Unit 99 (Executive Management)	Exempt	Deputy Chief of Police

Effective as soon as practicable after Council approval, all current and future incumbents and positions for the Deputy Chief of Police classification will be re-designated from the San Jose Police Officers' Association to Unit 99.

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CITY COUNTERPROPOSAL—DISCIPLINARY APPEALS

City 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.
- 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 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 IV Arbitration for this process. Immediate arbitration shall not apply.

25.8.6.1 Employees who elect to use the dispute-resolution provisions of this Agreement, as opposed to electing their right to appeal their discipline to the Civil Service

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Commission, recognize and agree that any resulting arbitrator's award will be published. The published version of the arbitrator's award will redact the name and any other identifying features of the officer to preserve confidentiality. The opportunity to appeal to the Civil Service Commission shall fulfill the City's obligations to provide an administrative appeal pursuant to Government Code section 3304.

- 25.8.7 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~~ POA must agree (i.e., must be the party taking the matter to arbitration).

25.9 Disciplinary Procedures

- 29.9.1 The disciplinary procedures that shall apply to members of this bargaining unit are contained in the City's Discipline Policy (2.1.3) of the City's Administrative Policy Manual, and incorporated herein by reference, with the following modifications:

- 25.9.2 With respect to the "Skelly Conference," given the particular importance of prompt investigations and disciplinary action with respect to peace officers, and in order to avoid undue delays, the Skelly Conference must occur within thirty (30) days of the date the Notice of Intent to Discipline (NOID) with supporting materials is issued by the City. This deadline may only be extended for compelling reasons and upon written mutual agreement of the parties. Unavailability of a particular representative is not a valid reason for an extension beyond this time limitation. The employee has the option of submitting a Skelly response in writing for any reason, including instances where an employee's preferred representative is unavailable within 30 days following the NOID. Failure of the employee and/or their

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representative to request a Skelly Conference within the specified time limit contained in the NOID and/or to participate in a Skelly Conference or submit a written response within these time limits shall be deemed a waiver of the employee's right to a Skelly Conference and permit the City to proceed directly to the issuance of a final Notice of Discipline (NOD).

25.10 Disciplinary Arbitration

25.10.1 For disciplinary matters only, the POA shall select two arbitrators from a list of arbitrators who are registered with the California State Mediation and Conciliation Service (CSMCS).

The City shall select a total of two arbitrators, one of which will be a retired judge registered with CSMCS, and the other, a Neutral from the Judicial Arbitration and Mediation Service (JAMS).

- In the event the retired judge from CSMCS is unavailable for more than 60 days, the City may substitute the retired judge with any arbitrator available from either CSMCS or JAMS.
- If the City selects a JAMS Neutral, the City shall pay any difference in cost between an arbitrator from CSMCS and the JAMS Neutral, if any.

The arbitrators/JAMS neutrals selected by the City and the POA will serve on a disciplinary arbitration panel during the term of this Agreement, and will rotate in the following manner:

- 1st case = 1st City Selected Arbitrators or JAMS Neutrals
- 2nd case = 1st POA Selected Arbitrators
- 3rd case = 2nd City Selected Arbitrators or JAMS Neutrals
- 4th case = 2nd POA Selected Arbitrators

Once an arbitrator has been selected by the City or POA and assigned to preside over a particular case, the same arbitrator cannot be assigned a subsequent case until the following arbitrator in the rotation has been assigned a case.

By mutual agreement, the City and POA can remove a particular arbitrator from the rotation. If the arbitrator/neutral was chosen by the City, the City may replace that arbitrator/neutral with another panelist from CSMCS or JAMS. If

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the arbitrator was chosen by the POA, the POA can select another panelist from CSMCS.

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CITY COUNTERPROPOSAL– REHIRED RETIREE

City Proposed Language:

ARTICLE 60

~~60.1 The City may establish a Rehired Retiree Program for the reemployment of Police retirees of the Police and Fire Department Retirement Plan to conduct background investigations and other duties. The POA and the City agree to meet and confer over any other duties for rehired retirees. This program shall be similar to the Rehired Retiree Program for the reemployment of retirees of the Federated City Employees' Retirement System as provided in City Administrative Policy Manual Section 3.1.5 and the San Jose Municipal Code, Part 9 of Chapter 3.28 of Title 3. The duties performed by employees in the Rehired Retiree Program for the reemployment of Police Retirees shall be determined by the Chief of Police or designee. Additional details related to the Rehired Retiree Program will be provided for in City Administrative Manual Section 3.1.5, Reemployment of Retirees. Details related to the Rehired Retiree Program will be provided for in City Administrative Policy Manual Section 3.1.5, Reemployment of Retirees. The Chief of Police or designee shall determine the Administrative positions/assignments performed by employees in the Rehired Retiree Program, subject to the guidelines in City Administrative Manual Section 3.1.5.~~

The City and the POA agree to meet and confer over a period not to exceed 60 days from the date the overall tentative agreement for a successor Memorandum of Agreement is signed by all parties and approved by City Council, regarding the process and guidelines for non-administrative assignments.

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CITY COUNTER PROPOSAL – MODIFICATION OF BARGAINING UNIT WORK

City Proposed Language:

ARTICLE 51

51.1 The City has the discretion to contract out and/or civilianize the following ~~five (5)~~ positions during the term of this Agreement:

#	Position	Number
4	Deputy Chief – Bureau of Technical Services (BTS)	4
12	Bureau of Field Operations Administrative Positions (BFO)	2
23	Public Information Officers (PIOs)	1
3	Crime Evidence/Warehouse Officer	2
4	Reserve Unit Officer	1
4	Community Service Officers' Supervisor	1
Total		65

~~At the City's option, a non-sworn classification for a Police Cadet position may be created.~~

~~In addition to provision 51.2 below, the City and POA agree that during the term of this Agreement discussions will continue related to the contracting and/or civilianization of the following positions:~~

#	Position
1	Airport Police Officers
2	Helicopter Pilots
3	Shooting Range
4	Training Specialist

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The City and the POA further agree that during the term of this Agreement the City has the discretion to contract out/civilianize an additional five (5) positions except positions in patrol, investigations or Internal Affairs. Any discussion regarding the civilianization of positions in patrol, investigations or Internal Affairs will occur separately as part of the Police Reform discussions.

#	Position	Number
1	Crime Evidence/Warehouse Officer	2
1	Reserve Unit Officer	1
Total		3

51.151.2 Any contracting out and/or further civilianization of positions represented by the POA during the term of this Agreement would be subject to the meet and confer process. The City will provide advance notice to the POA and the opportunity to demand to meet and confer regarding contracting out and/or further civilianization of work currently performed by bargaining unit members.

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CITY COUNTERPROPOSAL – TRAININGS

The City appreciates the POA's willingness to implement training on the following topics:

- On-going De-escalation
- Implicit Bias
- Peer Intervention

While the training of staff, including, but not limited to, the implementation of new trainings, falls within the discretion of the Police Department, the City is open to reviewing the trainings proposed by the POA and offering them to sworn employees in the Police Department, if deemed appropriate and practicable by the Chief of Police or designee.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL – PERFORMANCE EVALUATION

City Proposed Language:

ARTICLE 46 PERFORMANCE EVALUATION

46.1 Key Element Review

If the employee formally receives an overall performance rating of “meets standards” or above, but receives below “meets standards” in an individual key rating, the employee may request a review of that individual key element by the Chief of Police or designee. The employee must submit a written request to the Chief of Police, or designee, specifying the reasons for the request within 30 calendar days from the date the employee received the final performance appraisal. The Chief of Police, or designee, shall investigate the request, arrange a meeting with the employee, and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Chief of Police, or designee, shall be final.

46.2 Overall Rating Appeal

If the employee formally receives an overall performance rating that is below “meets standards,” the employee may appeal the rating. Such appeal shall be made in writing to the Chief of Police, or designee, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Chief of Police, or designee, shall investigate the appeal, arrange a meeting, and provide a written response to the employee within thirty (30) calendar days of the receipt.

46.2.1 If the employee is dissatisfied with the decision of the Chief of Police, or designee, the employee may, within ten (10) calendar days from the Chief of Police’s or designee’s, response, request a meeting with the City Manager, or designee. Such request shall be made in writing and shall include the reason(s) the employee is not satisfied with the decision previously rendered.

46.2.2 The City Manager, or designee, shall hold a meeting within a reasonable time, and within ten (10) days of the hearing shall inform the employee of the decision. The decision of the City Manager, or designee, shall be final. This will be the only appeal process applicable to review the performance appraisal. The employee shall have the right to Organization representation at the meeting with the Chief of Police, or designee, or the City Manager, or designee.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

46.3 Effective March 2022, the performance evaluation rating period will coincide with annual shift change.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL – LATERAL OFFICER VACATION ACCRUAL RATE

City Proposed Language:

ARTICLE 30

30.5 Effective on or after the first pay period after Council approval in Open Session of a Tentative Agreement for a Successor Memorandum of Agreement (MOA) between the City and the POA, the City Manager or designee is authorized to adjust the annual vacation accrual of a Lateral Police Officer, for the purpose of hiring or re-hiring that Officer into City service. This action allows hiring managers to place new or rehired Lateral Police Officers with prior sworn public service credit at a vacation accrual rate commensurate with their total years of sworn public service with the approval of the City Manager or designee.

Process/Guidelines

A Lateral Police Officers' vacation accrual may be adjusted upon first hire or rehire date to provide the Officer with credit for previous sworn public service upon the approval of the City Manager or designee.

1. Credit for sworn public service shall only be given for completed years of sworn service as a full-time benefitted employee.
 - a) If an Officer worked at a public service agency on a part-time benefitted basis, completed years will be based on the completion of 2,080 hours.
 - b) For example, if an Officer has previously worked six (6) complete years in another public agency or a combination of sworn public service and sworn service with the City of San Jose, the City Manager or designee may authorize the Officer to accrue vacation at the 6-10 annual hourly rate, which is 120 hours per year. The below table illustrates the vacation annual hourly accrual rates by years of service in the POA MOA:

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

Vacation accrual caps shall apply to the designated annual hourly accrual rate.

2. Sworn Public service credit shall not apply to any other benefits.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

3. The Officer has the responsibility to prove certification of previous sworn public service from the Officer's previous employer(s), if so requested.
 - a. A public service agency may be defined as a(n) International Federal, State, City, County, Special District, or other publicly funded agency that provides programs, goods, or services. A public agency is not defined as a not-for-profit organization or non-governmental organization that relies on donations and volunteers to operate.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL – COMPENSATORY TIME

ARTICLE 13

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, 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. While on the plan, the employee will

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

be ineligible for any voluntary overtime assignments, unless the overtime is authorized for pay; authorization for paid overtime shall be consistent with Department policy.

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.

13.6.8 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.

2021 CITY OF SAN JOSE – POA NEGOTIATIONS

13.6.9 Employees who request to use sick leave will be ineligible to work any voluntary overtime assignments the day the sick leave is requested and the immediate day after (24 hours from the start of the shift). In the event that time is worked during this period the employee will receive pay at the 1.0 rate for any hours actually worked.

LETTER OF INTENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)

Calls for Service

WHEREAS the CITY OF SAN JOSE (the City) and the SAN JOSE POLICE OFFICERS' ASSOCIATION (the Union), collectively "the PARTIES," are committed to working collaboratively to maintain community support for, and engagement with, the SAN JOSE POLICE DEPARTMENT (SJPD), and to safely institute an alternative response to certain calls for service; and,

WHEREAS the Union and many residents have raised concerns about the use of San Jose Police Officers to respond to certain calls for service; and,

WHEREAS many residents and the Union agree that certain types of calls for service may not necessitate an armed response; and,

WHEREAS ceasing to respond to certain non-emergency calls as set forth below would allow San Jose Police Officers to more swiftly respond to emergencies, improve neighborhood safety, engage in community policing as it was originally envisioned, improve police/community outcomes, improve community/police relations, and reduce social conflicts that are non-criminal in nature;

Now, THEREFORE, the PARTIES agree that, including but not limited to, the following types of 911 calls for service shall be evaluated for their suitability to be responded to by non-police officers in conjunction with the identification of which entities and/or agencies would respond instead of police officers:

1. Non-criminal and/or non-violent homeless and quality of life related calls;
2. Non-criminal mental health calls;
3. Well-being checks where there is not a crime in progress;
4. Juvenile disturbance or juveniles beyond parental control calls;
5. Calls to schools unless there is a call for an emergency police response or making a mandatory reporting notification;
6. Certain Public Health Order violations (e.g., COVID);
7. Transports for other City departments (e.g., APS, CPS);
8. Calls for service at City parks;
9. Under the influence calls (alcohol and/or drugs) where there is no other crime in progress;
10. 10-33A – Commercial, Residential & Vehicular;
11. 10-53 – Person Down;
12. Welfare Check – WELCK;
 - a. Non-Criminal;
 - b. Courtesy request from Drs/Hospitals;
13. Non-Fatal Vehicle Accidents – 1181/1182/1183/1179;


LETTER OF INTENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)

- a. Non-DUI/Non-Criminal;
14. Parking violations;
 15. Driveway tow;
 16. Abandoned vehicles;
 17. Person dumping trash;
 18. Vicious and dangerous dog complaints; and,
 19. Calls for service for loud noise, loud music, or 'party' calls that are anonymous or have no victim.

The Union agrees to cease providing a sworn police response to the calls listed above once the City initiates a new response protocol, in addition to any other calls for service identified by the Reimagining Community Safety Advisory Group, if they are determined to be suitable to be responded to by non-police officers. The Union will work with the City/Department to implement safe protocols if an SJPd response becomes necessary once a non-sworn responder arrives on scene and evaluates the incident.

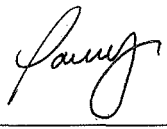
This Letter of Intent will initiate the process to determine the feasibility of enacting this new response protocol, including which entity, person or persons will respond to the calls for service that are determined to not warrant a sworn police response.

FOR THE CITY:

 4/27/2021

Jennifer Schembri Date
Director of Employee Relations
Director of Human Resources

FOR THE UNION:

 4/26/21

Paul Kelly Date
President, SJPOA

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)

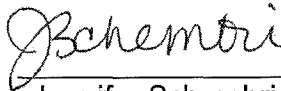
Police Reforms Work Plan Items and Reimagining Community Safety

The City and the San Jose Police Officers' Association (POA) are committed to continuing discussions related to items on the Police Reforms Work Plan, including the Reimagining Community Safety work plan item to identify new ways in which police officers can address social issues and reduce social conflicts that are non-criminal in nature, and identify initiatives and practices to help improve community and police relations. These items include, but are not limited to, continuing discussions on the following issues:

- Expansion of Reserve Officer Duties
- Use of Force Review
- Less than Lethal Use of Force Options
- Body Worn Camera Footage Audits
- Recruitments and Promotions
- Investigation of Alleged Police Misconduct


This Agreement is considered part of the tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council.

FOR THE CITY:

 4/27/2021

Jennifer Schembri Date
Director of Employee Relations
Director of Human Resources

FOR THE UNION:

 4/26/21

Paul Kelly Date
President, SJPOA

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

Compensatory Time Off

The City of San Jose and the San Jose Police Officers' Association (POA) agree to continue discussions related to compensatory time off, including, but not limited to; a possible buy down of an employee's outstanding compensatory time balance.

This Agreement is considered part of the tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council.

For the City:

J. Schembri 4/27/2021
Jennifer Schembri Date
Director of Employee Relations
Director of Human Resources

For the Employee Organization:

Paul Kelly 4/26/21
Paul Kelly Date
President, POA

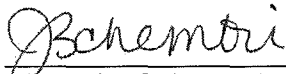
SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)

Early Intervention System

The City and the San Jose Police Officers' Association (POA) will complete the meet and confer process within 90 days of adoption of this agreement, to improve the database that tracks officer pursuits, uses of force, and complaints. The information culled from this data will inform the creation of an improved Early Intervention System that identifies and compares individual officers to standards for each category within their peer group. This Early Intervention System shall not be punitive in nature, but rather shall be used as a continuous improvement instrument to identify officers in need of additional training, mentoring, and/or other assistance to reduce the categorized items to an acceptable level within their peer group.


This Agreement is considered part of the tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council.

FOR THE CITY:

 4/27/2021

Jennifer Schembri Date
Director of Employee Relations
Director of Human Resources

FOR THE UNION:

 4/26/21

Paul Kelly Date
President, SJPOA

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

Investigations of Alleged Police Officer Misconduct

The City and the San Jose Police Officers' Association (POA) agree to the following through the term of the agreement.

- Any investigative report conducted by Internal Affairs (IA) will be reviewed by the Independent Police Auditor (IPA). Selected investigative reports may also be reviewed by the Office of Employee Relations (OER), at its choosing. For investigations that are not deemed tolled pursuant to the Public Safety Officers' Procedural Bill of Rights (POBR), the investigative report will be provided to the IPA and/or OER no later than 9 months from the date the alleged misconduct was discovered by a person in the Department authorized to initiate an investigation before it is submitted to the IA Commander.
- The IPA and/or OER may provide written requests to the IA investigator in a timely manner, which may include, but is not limited to, requests for IA to interview additional witnesses, ask additional questions, or review an additional issue. The IA investigator must address written requests provided by the IPA and/or OER. The IA investigator must provide an additional opportunity for the IPA and/or OER to review any revisions to the investigative report based on the written requests provided by the IPA and/or OER prior to submission of the investigative report to the IA Commander.
- The parties agree that this Side Letter shall allow the IPA and/or IPA staff to be permitted to ask direct questions of a subject or witness officer during an administrative interview. In full compliance with POBR, the parties further agree that an officer is required to answer the Independent Police Auditor's questions just as they are required to answer questions posed by Internal Affairs. The parties acknowledge that the POBR limits the number of interrogators in an administrative interview to no more than two at a time. Nothing herein changes that.
- If the City deems it necessary to amend San Jose Municipal Code section 8.04.010 subsection A3 to allow the Chief of Police to delegate authority to the IPA or designated IPA staff to ask questions of a subject or witness officer during an administrative interview, the IPA and IPA staff shall be permitted to ask direct questions of a subject or witness during an administrative interview effective after that amendment is approved by City Council. All interviews and investigations shall be conducted in accordance with POBR.

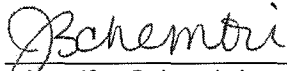
The parties agree to continue discussions on issues related to investigations of alleged police officer misconduct.

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

Investigations of Alleged Police Officer Misconduct

This Agreement is considered part of the tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council. The provisions contained in this Side Letter will end on June 30, 2022 unless mutually agreed upon by both parties.

FOR THE CITY:



4/27/2021

Jennifer Schembri
Director of Employee Relations
Director of Human Resources

Date

FOR THE UNION:



4/26/21

Paul Kelly
President, SJPOA

Date

April 26, 2021

Page 2 of 2

ATTACHMENT A

