

**Committee Item No.** 13  
**Board Item No.** 19

## AGENDA PACKET CONTENTS LIST

**Date:** Nov. 5, 2020  
**Date:** Nov. 17, 2020

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Correspondence

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Tentative Agreement – September 11, 2020
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Controller's MOU Costing Analysis Memo – October 28, 2020
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Referral FYI – September 23, 2020
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

**Date:** October 30, 2020

**Date:** Nov. 12, 2020

[Memorandum of Understanding and Settlement of Grievances - Police Officers Association]

**Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association (“POA”), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for FY2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors hereby adopts and implements the Tentative Agreement between the City and County of San Francisco (“City”) and the San Francisco Police Officers Association (“POA”), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding (“MOU”) between the City and POA, to defer wage increases currently set for fiscal year 2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and

1 set wages for the additional term; and (2) approving settlement of two grievances filed by the  
2 POA against the City, for not to exceed \$359,613.87. The grievances were filed on March 25,  
3 2020 and June 29, 2020 and involve compensation disputes under the Memorandum of  
4 Understanding. The Board of Supervisors hereby approves the First Amendment to the MOU  
5 and authorizes the City Attorney to settle and compromise the grievances by payment of not  
6 to exceed \$359,613.87 (subject to all applicable taxes, deductions and other withholdings).

7 The Tentative Agreement, First Amendment to the MOU, and settlement agreement so  
8 implemented are on file with the Clerk of the Board of Supervisors in Board File No. 201050.  
9

10 Section 2. The Board of Supervisors hereby authorizes the Department of Human  
11 Resources to make non-substantive ministerial or administrative corrections to the MOU.  
12

13 Section 3. Effective Date. This ordinance shall become effective upon enactment.  
14 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance  
15 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of  
16 Supervisors overrides the Mayor's veto of the ordinance.  
17

18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: /s/  
21 KATHARINE HOBIN PORTER  
Chief Labor Attorney

22 n:\labor\as2020\2100047\01477643.docx  
23  
24  
25

**AMENDMENT NO. 1  
TO THE 2018-2021 MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND  
SAN FRANCISCO POLICE OFFICERS ASSOCIATION  
UNITS P-1 AND P-2A**

The parties hereby agree to amend the Memorandum of Understanding as follows, subject to approval by the San Francisco Board of Supervisors and ratification by the San Francisco Police Officers' Association:

**ARTICLE III**

**Section 1. Wages**

**A. General Wage Increases:**

178 Employees shall receive the following base wage increases:

July 1, 2018 3%

July 1, 2019 3%

**The City and POA had previously negotiated the following:**

1. Effective July 1, 2020, represented employees will receive a base wage increase of 2%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021.

2. **The City and POA agree that subsection (1) above is superseded, and the 2% raise originally due on July 1, 2020 and delayed to the pay period including January 1, 2021 will be deferred to the close of business on June 30, 2022.**

**The City and POA had previously negotiated the following:**

1. Effective January 1, 2021, represented employees will receive a base wage increase of 1%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on January 1, 2021, will be delayed by six (6) months and be effective close of business June 30, 2021.

**2. The City and POA agree that subsection (1) above is superseded, and the 1% wage increase originally due on January 1, 2021 and delayed to the close of business on June 30, 2021 will be deferred to the close of business June 30, 2023.**

**Effective July 1, 2021, represented employees will receive a base wage increase of 3.0%, except that if the March 2021 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2021-2022 that exceeds \$200 million, then the base wage adjustment due on July 1, 2021, will be delayed by approximately six (6) months, to be effective on January 8, 2022.**

**Effective July 1, 2022, represented employees will receive a base wage increase of 3.0%, except that if the March 2022 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2022-2023 that exceeds \$200 million, then the base wage adjustment due on July 1, 2022, will be delayed by approximately six (6) months, to be effective on January 7, 2023.**

#### **Parity**

**The parties agree that if any new general base wage increase is agreed to, granted or awarded to fifty percent plus one (50% plus 1) of employees covered by the Public Employee Committee of the San Francisco Labor Council during the twelve (12) months following the approval of the First Amendment to this 2018-2021 Agreement, which wage increase would apply in Fiscal Years 2020-2021, 2021-2022 or 2022-2023, then the City shall provide that general base wage increase to the members of this bargaining unit in the same amount and on the same effective date. This provision does not apply to any existing wage increases or agreement on deferral of any existing wage increases.**

### **ARTICLE III**

#### **Section 8. Retirement**

##### **E. Retirement Restoration Payment**

**For employees who retire between December 26, 2020 and June 30, 2024, the City will provide restoration back pay for the following deferred wage and premium pay increases on regularly scheduled hours for the 12-month period that preceded the date of retirement:**

- **2% deferred from December 26, 2020 through the close of business June 30, 2022;**

- 1% deferred from the close of business June 30, 2021 through the close of business June 30, 2023; and
- Retention pay deferred from December 26, 2020 through the close of business June 30, 2022.

Restoration payments constitute pensionable compensation, to the maximum extent permissible under the Charter.

As an example, by way of illustration only, if an employee retires on June 30, 2021, the City would provide back pay to the employee for the period December 26, 2020 through June 30, 2021, in the amount of 2% on regularly scheduled hours. As another example, by way of illustration only, if an employee retires on June 30, 2022, the City would provide back pay to the employee for the period July 1, 2021 through June 30, 2022, in the amount of 1% and 2% on regularly scheduled hours.

### ARTICLE III

#### Section 2. Overtime and Compensatory Time-Off

##### Subsection A. Overtime

XXX. Effective January 1, 2021, employees shall not be eligible for 10B overtime assignments during: (a) hours on which an employee is regularly scheduled to work; or (b) if they have used more than twenty (20) hours of paid sick leave (pay code "SLP") in the prior three months as reviewed on a quarterly basis per the schedule below.

<u>Quarter</u>	<u>SLP Review</u>	<u>10B Period</u>
<u>1</u>	<u>9/1 – 11/30</u>	<u>1/1 – 3/31</u>
<u>2</u>	<u>12/1 – 2/28</u>	<u>4/1 – 6/30</u>
<u>3</u>	<u>3/1 – 5/31</u>	<u>7/1 – 9/30</u>
<u>4</u>	<u>6/1 – 8/31</u>	<u>10/1 – 12/31</u>

As an example, for illustrative purposes only, an employee is eligible for 10B overtime in the first quarter of a calendar year (January 1 through March 31) if the employee has not used more than 20 hours of SLP in the period September 1 through November 30 of the prior year.

XXX. For purposes of (b) in the preceding paragraph, the City shall count sick leave paid (SLP) regardless of the reason for which it is used (e.g., sick with a cold; dentist appointment) with the following exceptions:

- Birth or adoption of a child; and
- Bereavement leave pay (i.e., pay code "BLP") due to the death of a spouse/domestic partner, parent, child or sibling. The SLP calculation shall include BLP for other reasons, for example, BLP for the death of a grandparent shall count to the calculation under (b).
- The SLP calculation shall not include:
  - COVID-19 Sick Pay (pay code COV)

- **Federal COVID-19 Sick Pay (pay codes ESP, ESU, ESF)**
- **Unpaid Leave (pay code UPL)**
- **Unpaid Sick Leave (pay code SLL)**
- **Disability Leave Pay (pay code DLP) – the City will not consider SLP hours taken in conjunction with the filing of a disability claim but only if the employee affirmatively files the disability claims with WC and Payroll to ensure the SLP hours are excluded. If after review the disability claim is denied, the City will calculate those SLP hours in the quarter in which the determination on the disability claim is made (e.g., if an employee used SLP hours in February and the disability claim was denied in mid-May, the SLP would be included in the calculation for the April, May and June quarter).**
- **Paid Parental Leave (PPL)**

### **ARTICLE III. PAY, HOURS AND BENEFITS**

#### **Section 4. Premiums.**

##### **G. Retention Pay**

234. Employees who possess an intermediate POST certificate or higher and have completed the requisite years of service as a sworn member of the Department or Airport Bureau shall receive the following retention pay:

235. Effective July 1, 2018, eligible employees shall receive:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
23	2%
30	Additional 4% (6% total)

235a. **The City and POA had previously negotiated the following:**

236. 1. Effective July 1, 2020, eligible employees shall receive the following retention pay, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the increase in retention pay on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
10	1%
15	Additional 2% (3% total)
20	Additional 2% (5% total)
25	Additional 2% (7% total)

**2. The City and POA agree that the effective date in subsection (1) above is superseded, and the effective date of the retention pay premium due in the pay period including January 1, 2021 shall be deferred until the**

**close of business June 30, 2022.**

237. Eligibility for retention pay is subject to the following conditions and limitations:

~~238.~~ a. ~~employees must have worked and continue to work (regular paycode 'WK') not less than seventeen hundred (1,700) hours in an on-going, consecutive (rolling) twelve (12) month period;~~

~~239.~~ a. employees that have been issued a suspension of eleven (11) or more days during the preceding twelve (12) months shall not be eligible; and

b. employees must have a POST intermediate certificate or higher.

240. Retention pay shall be included for purposes of retirement benefit calculations and contributions as permitted by the Charter. It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who completed the above defined conditions.

**ARTICLE IV**

**Section 2. Duration.**

321. This Agreement shall be effective upon ratification and shall be effective from July 1, 2018 through June 30, 20212023.

**FOR THE CITY**

Date: 9/11/2020

**Carol Isen**

Digitally signed by Carol Isen  
DN: cn=Carol Isen, o=Department of Human  
Resources, ou=Employee Relations Division,  
email=carol.isen@dcgov.org, c=US  
Date: 2020.09.11 14:18:25 -0700

Carol Isen  
Employee Relations Director

**FOR THE UNION**

Date: 9/11/2020

DocuSigned by:

**Tony Montoya**

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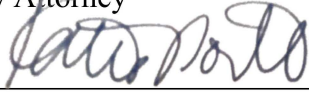
Tony Montoya  
President

*APPROVED AS TO FORM:*

DENNIS J. HERRERA



City Attorney

A handwritten signature in dark ink, appearing to read 'Katharine Porter', written over a horizontal line.

9/11/2020

Katharine Hobin Porter

Chief Labor Attorney

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

AND

SAN FRANCISCO POLICE OFFICERS' ASSOCIATION

UNITS P-1 AND P-2A

July 1, 2018 – June 30, 20243

**Revised per Amendment #1**

## **TABLE OF CONTENTS**

<b>ARTICLE I. REPRESENTATION.....</b>	<b>1</b>
Section 1. Recognition.....	1
Section 2. No Work Stoppages.....	1
Section 3. Management Authorities.....	2
Section 4. Negotiation Responsibility.....	2
Section 5. Grievance Procedure.....	3
Section 6. Release Time for POA Representatives.....	5
Section 7. Association.....	7
A. Payroll Deductions.....	7
B. Maintenance of Membership.....	7
C. Agency Fees.....	8
D. Indemnification.....	9
Section 8. Bulletin Boards and Distribution of Materials.....	9
Section 9. Lineups.....	9
<b>ARTICLE II. EMPLOYMENT CONDITIONS.....</b>	<b>10</b>
Section 1. Non-Discrimination.....	10
Section 2. Disabilities.....	10
Section 3. Personnel Files.....	11
Section 4. Rights of Individual Employees.....	12
Section 5. Access to Records of Department of Police Accountability.....	12
Section 6. Physical Fitness Program.....	13
Section 7. Temporary Modified Duty Assignments.....	13
Section 8. Seniority List.....	13
Section 9. Trading Privileges.....	13
Section 10. Watch Sign-Up.....	14
Section 11. Vacation Sign-Up.....	16
Section 12. Filling Vacancies.....	16
Section 13. Non-Emergency Special Event Assignments.....	16
Section 14. Meals and Breaks During Demonstrations.....	17
Section 15. Courtesy Parking System for Court Attendance.....	18
Section 16. District Station Parking.....	18
Section 17. Code Book.....	18
Section 18. Employee Training Reimbursement Program.....	18
Section 19. Canine Ownership.....	18
Section 20. Recruitment.....	19
A. Lateral Signing Bonus.....	19
B. Recruitment Committee.....	19
Section 21. Sergeants Rotation Pilot Program.....	19
Section 22. Health & Safety Committee.....	19
Section 23. Substance Abuse Testing.....	20
A. Mandatory Testing.....	20
B. Reasonable Suspicion.....	21
C. Employee Responsibilities.....	21
D. Management Responsibilities and Guidelines.....	22
<b>ARTICLE III. PAY, HOURS AND BENEFITS.....</b>	<b>23</b>

Section 1.	Wages.....	23
	A. General Wage Increases:.....	23
	B. Probationary Period and Step Advancement .....	24
	C. Lateral and Current Permanent City Employees Step Plan and Salary Adjustments .....	25
Section 2.	Overtime and Compensatory Time-Off. ....	25
	A. Overtime .....	25
	B. Compensatory Time-Off.....	27
Section 3.	Holidays. ....	28
Section 4.	Premiums. ....	29
	A. Acting Assignment Pay (Like Pay for Like Work) .....	29
	B. Field Training and Training Unit Coordinator Pay.....	30
	C. Bomb Squad/SWAT Team Pay .....	31
	D. Specialist Pay .....	31
	E. Motorcycle Pay .....	31
	F. Peace Officer Standards Training (POST) Certificate Pay .....	31
	G. Retention Pay .....	32
	H. Experienced Officer Incentive Pay .....	34
	I. Night Shift Differential .....	34
	J. Bilingual Pay.....	34
Section 5.	Other Pays. ....	35
	A. Canine Duty .....	35
	B. Standby Pay .....	35
	C. Call-Back Pay .....	35
	D. Court Appearance Pay and Administrative Hearings. ....	36
Section 6.	Uniform and Clothing Allowance.....	37
Section 7.	Health and Dental Coverage. ....	38
Section 8.	Retirement. ....	40
Section 9.	Wellness Programs.....	41
Section 10.	Paid Sick Leave Ordinance.....	43
Section 11.	Emergency Child Care Reimbursement Pilot Program .....	43
Section 12.	Parental Release Time.....	43
Section 13.	Flexible Watch Assignment Committee .....	44
<b>ARTICLE IV. SCOPE.....</b>		<b>45</b>
Section 1.	Severability. ....	45
Section 2.	Duration. ....	45

## DEFINITIONS

City	The City and County of San Francisco.
Association	The San Francisco Police Officers' Association.
Commission	The Police Commission of the City and County of San Francisco.
Day	Calendar day, unless otherwise specified.
Department	The San Francisco Police Department.
Charter	The Charter of the City and County of San Francisco.
Immediate Supervisor	The individual who immediately assigns, reviews, or directs the work of an employee.
Intermediate Supervisor	The next higher supervisor based on the organization pattern of the Department.
Employee	A full time peace officer within each classification listed in paragraph 1 herein, and used interchangeably with the word "officer."
Memorandum	This Memorandum of Understanding.
Watch	The period of time an employee is scheduled to be on duty.
Working Conditions	Wages, hours, benefits and other terms and conditions of employment, i.e., those matters within the scope of representation under the Meyers-Milias-Brown Act.

The parties recognize that recodifications may have rendered the references to specific Civil Service Rules and Charter sections contained herein, incorrect. Therefore, the parties agree that such terms will read as if they accurately referenced the same sections in their codified form as of July 1, 2007.

## PREAMBLE

This Memorandum of Understanding (hereinafter "MOU") constitutes a mutual agreement between the San Francisco Police Officers' Association (hereinafter referred to as the "Association") and the City and County of San Francisco (hereinafter referred to as the "City"), through the Office of the Mayor acting on behalf of the City and County of San Francisco, arrived at through good faith meeting and conferring pursuant to the Meyers-Milias-Brown Act and Charter Section A8.590-1, et. seq.

## ARTICLE I. REPRESENTATION

### Section 1. Recognition.

1. Pursuant to Government Code Section 3500, et. seq., the City recognizes the Association as the majority bargaining agent for sworn personnel of the San Francisco Police Department in the following bargaining units and classifications:

#### P-1 Police Rank and File

Q-2 Police Officer  
Q-3 Police Officer II  
Q-4 Police Officer III  
Q-35 Assistant Inspector  
Q-36 Assistant Inspector II  
Q-37 Assistant Inspector III  
Q-50 Sergeant  
Q-51 Sergeant II  
Q-52 Sergeant III  
0380 Inspector  
0381 Inspector II  
0382 Inspector III  
0385 Crime Scene Investigations Manager  
0386 Crime Scene Investigations Manager 2  
0387 Crime Scene Investigations Manager 3

#### P-2A Police Supervisory

Q-60 Lieutenant  
Q-61 Lieutenant II  
Q-62 Lieutenant III  
Q-80 Captain  
Q-81 Captain II  
Q-82 Captain III

2. The City's Employee Relations Director agrees not to implement under Administrative Code Section 16.210 any bargaining unit reassignment of the above listed classifications during the term of this Agreement.

### Section 2. No Work Stoppages.

3. During the time this MOU is in force and effect, the Association and each member of its bargaining unit covenant and agree that she/he/it will not authorize, engage or participate in any strike, work slowdown or any form of work stoppage including but not limited to absenteeism, observing picket lines or any other form of sympathy strike.

## ARTICLE I – REPRESENTATION

### Section 3. Management Authorities.

4. The City shall have authority for the policies and administration of the Department and the power to organize, reorganize and manage the Police Department and its employees. Nothing in this document shall be interpreted as abrogating the Charter in any of its parts. Said authority shall include, but not be limited to, work rules and regulations. This paragraph is not to be interpreted as a limitation on the rights of the Association under the Meyers-Milias-Brown Act.

### Section 4. Negotiation Responsibility.

5. A. Except in cases of emergency, the City/Department shall give reasonable written notice to the Association of any proposed change in general orders or other matters within the scope of representation as specified in Government Code Section 3504.5. The Association shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
6. In cases of emergency when the City/Department determines that a proposed change as described herein must be adopted immediately without prior notice or meetings with the Association, the City/Department shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
7. B. If the Association does not respond within thirty (30) calendar days from the date of receipt of written notification of a proposed change as described in subsection A. hereof, the Association shall be deemed to have waived its opportunity to meet and confer on the proposed change.
8. C. If the Association timely requests the opportunity to meet and confer as provided herein, the City/Department, with the direct assistance and participation of the Employee Relations Division, agrees to meet and confer with the Association over such proposed change or changes, within thirty (30) calendar days of such timely request, unless a longer period of time is mutually agreed upon, in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on the proposed change or changes.
9. D. If no agreement is reached, the matter shall, at the request of either party, be resolved pursuant to the impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7. Staffing matters, except for current safety practices pertaining to two-officer vehicles, shall be excluded from the impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7.
10. E. This Memorandum sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Memoranda of Understanding, Understandings, or Agreements, whether formal or informal, are hereby superseded or terminated in their entirety. This Memorandum may be modified, but only in writing, upon the mutual consent of the parties and ratification by the Board of Supervisors.

## *ARTICLE I – REPRESENTATION*

### Section 5. Grievance Procedure.

11. The City and the Association recognize that early settlement of grievances is essential to sound employee-employer relations. The parties seek to establish a mutually satisfactory method for the settlement of grievances, as provided for below. In presenting a grievance, the aggrieved and/or his or her representative is assured freedom from restraint, interference, coercion, discrimination or reprisal.

#### Definition

12. A grievance is defined as any dispute that involves the interpretation or application of a specific provision of this Agreement, or relating to General Orders 3.08, 3.15, 11.01, 11.03, 11.05, 11.06 and 11.10.

#### Grievance Description

13. A grievance must include the following:
- a. The basis and date of the grievance as known at the time of submission;
  - b. The section(s) of the Agreement allegedly violated;
  - c. The remedy or solution sought.
14. If the grievance does not contain the information described in (a) – (c), the City may request such information, at any step in the process, and defer processing until the information is provided. If the information is not provided within 30 days of request, the grievance, or that portion of it as to which the requested information is not supplied, is deemed withdrawn.

#### Time Limits

15. The parties have agreed upon this grievance procedure in order to ensure the swift resolution of all grievances. The parties must follow each step within the applicable timelines. No steps of the grievance procedure may be skipped without mutual agreement.
16. For purposes of this grievance procedure, a business day is Monday through Friday, 8am to 5pm, excluding legal holidays.
17. Grievances shall be settled in conformity with the following procedure. Except, however, actions taken by the City that are necessary to ensure compliance with federal, state or local laws, ordinances or regulations shall not be grievable hereunder. After notice of such intended action by the City, the Association may however, offer in writing its view on compliance and possible alternative solutions, within ten (10) business days to the Chief of Police who shall respond in writing to the Association within ten (10) business days. The arbitrability of all grievances shall be determined by a court of competent jurisdiction.

#### Informal Discussion with Immediate Supervisor



## **ARTICLE I – REPRESENTATION**

18. An employee with a grievance may first discuss it with his or her immediate supervisor, or the next level in management, to try to work out a satisfactory solution in an informal manner.

### **Step I**

19. If the employee does not obtain a solution to the grievance by informal discussion, the employee or the Association shall submit the grievance in writing to his or her commanding officer ten (10) business days of the facts or event giving rise to the grievance
20. After review and discussion, the commanding officer shall notify the grievant(s) and the Association representative, if any, within seven (7) business days of receipt of the grievance, in writing, of the decision and the reasons.

### **Step II**

21. If the grievance is not resolved in Step I, the Association shall submit the grievance to the Chief of Police within seven (7) business days after receipt of the commanding officer's decision stating the reasons why the Step I answer is not satisfactory.
22. The Chief, or designee, will review the material submitted and shall hold a meeting on the grievance at the request of the Association on behalf of the grievant, unless the Chief is not empowered to act. The Chief shall respond in writing and render a decision to the grievant, and the Association, within ten (10) business days.

### **Step III**

23. If the grievance is not resolved at Step II, the Association has the right to appeal the decision of the Chief of Police to the Employee Relations Director within ten (10) business days after the date of the Chief's response. The Association shall state the reason why the Step II response is not satisfactory.
24. The Employee Relations Director shall have ten (10) business days to issue a written response. In lieu of a response, the Employee Relations Director may request a meeting to seek to resolve the grievance. If any such meeting is unsuccessful to resolve the grievance, the Employee Relations Director shall issue a written response within fifteen (15) business days of the meeting.
25. If the Employee Relations Director is unable to resolve the grievance to the mutual satisfaction of the parties in the time prescribed, the Association may submit the grievance to arbitration within fifteen (15) business days of receipt of the Step III response. Only the Association may submit a grievance to arbitration. The Employee Relations Director shall acknowledge receipt of the Association's letter moving the grievance to arbitration.
26. The arbitrator shall be an impartial person selected by mutual consent of the parties or by the parties alternately striking arbitrators from the standing panel. The first party to strike will be determined by lot, coin flip or other comparable method.

### **Arbitrator Panel**

## ARTICLE I – REPRESENTATION

27. By September 1, 2018, the City and the Association shall select a standing panel of arbitrators to hear grievances. The parties shall establish the panel in the following fashion: by not later than July 20, 2018, each party shall submit to the other, the names of seven (7) arbitrators and prepare a list with all arbitrators submitted by the parties. The parties shall then, beginning by lot, alternately strike names from the list until seven (7) names remain. The seven (7) remaining persons shall constitute the standing arbitration panel for the term of the Agreement.
28. The decision of the Arbitrator shall be final and binding upon the parties. The Arbitrator shall not have the right to alter, amend, delete or add to any of the terms of this Agreement.
29. Notwithstanding any other provisions of this MOU, disciplinary or punitive actions described in Charter Section A8.343 cannot be grieved or arbitrated. An arbitrator selected pursuant hereto shall have no authority to hear or decide any such disciplinary or punitive actions.
30. An Arbitrator selected pursuant to this Agreement shall have no power or authority to alter or supersede the Charter, the Civil Service Commission rules, or the Administrative Code.
31. The parties shall share the jointly-incurred costs of the arbitration proceedings. Each party shall in good faith divulge to the other party all available material facts at the time said party acquires knowledge thereof concerning the matter in dispute.
32. Nothing herein shall restrict the right of the City or the Department to initiate grievances under this Agreement. In such instance, the City or the Department shall file the grievance with the Association. The Association shall have ten (10) business days to issue a written response. If the grievance is not resolved, the City or the Department may submit the grievance to arbitration within fifteen (15) business days of receipt of the Association's response.

### A. Expedited Arbitration

33. Notwithstanding the above provisions, the parties may by mutual agreement agree to submit a particular grievance to expedited arbitration. Expedited arbitration may include, by the agreement of the parties:
  1. time-limited argument;
  2. waiver of court reporter and/or transcript;
  3. closing arguments in lieu of briefs;
  4. bench decision by the arbitrator; and
  5. such other expedited procedures as the parties deem advisable for the case at hand.

### Section 6. Release Time for POA Representatives.

34. An employee may designate a representative of his/her choice to represent him/her in grievance meetings or investigative interviews mutually scheduled with Department management and in scheduled appeals hearings. Where a formal written statement of charges has been filed against the employee or where the employee is subjected to an interrogation focusing on matters that are likely

## ARTICLE I – REPRESENTATION

to result in punitive action, the employee may choose any representative not subject to the same investigation. In all other matters, if an employee chooses a sworn employee as his/her representative, that employee must be below the rank of Commander. The sworn employee representative shall serve without loss of pay or benefits to the extent such representation occurs on regular scheduled time, and provided such use of on-duty time is reasonable.

35. A reasonable number of Association representatives may participate with management in mutually scheduled employer-employee relations meetings on their regularly scheduled duty time without loss of pay or benefits. One Association representative other than the President may be released from duty as necessary to attend public meetings of the Police Commission. This representative shall not appear before the Commission in uniform. This release from duty is subject to the operational needs of the department.
36. The City agrees to provide the POA President with eighty (80) hours of release time each pay period. Sixty (60) of these release time hours each pay period will be on City time. The POA will reimburse the Department for the remaining twenty (20) hours each pay period.
37. The POA agrees that the start of the term of office for a newly-elected POA President will coincide with the start of a City pay period. The President's pay rate shall include POST pay and any retention pay for which he/she is eligible. The President shall not be eligible for other pay premiums, other special pays, overtime assignments, or "10B" assignments during the period of release time. The POA President will be considered to be on a standard five (5) day workweek during such release time.
38. While on release time, the President will utilize accrued leave, as appropriate, for any absences. The use of such leave time will be reported to the Departmental Human Resources Officer for accounting purposes.
39. During the sixty (60) hours each pay period of City-paid release time, the POA President shall engage only in the following activities:
  40. 1. preparing for and participating in meet and confer or consultation with representatives of the City or Police Department on matters relating to employment conditions and employee relations, including wages, hours and other terms and conditions of employment; and
  41. 2. investigating or processing grievances or appeals.
42. The POA President shall not participate in any other activities, including but not limited to political activities, during this City-paid release time. The POA President shall provide documentation to the Chief certifying that during each pay period, the POA President used the sixty (60) hours of City-paid release time only for authorized purposes. The POA President shall provide this certification at the conclusion of each pay period.
43. The POA agrees to reimburse the City for the balance of the release time, which is twenty (20) hours of release time each pay period. The amount reimbursed to the City shall be 1.35 times the base hourly rate of pay for the permanent rank held by the POA President. The POA shall submit the required payment to the Police Department within 11 days after the close of each pay period.

## ARTICLE I – REPRESENTATION

44. It is understood and agreed that during all release time hours, including those for which the City is reimbursed by the POA, the President is required to comply with all applicable departmental and City rules and policies for active duty officers, including attendance at training, maintenance of certifications, and compliance with the substance abuse policy and any applicable departmental Statement of Incompatible Activities. The President will sign a statement to that effect at the commencement of the initial period of release time.
45. As a precondition to providing this release time, the POA agrees to execute an agreement, in a form acceptable to the City Attorney, that indemnifies and holds the City harmless from any legal claims by any party as to the conduct of the President during any period of release time. This agreement will be executed prior to the start of the release time.
46. The parties acknowledge that qualified POA officials utilizing unpaid union leave may be entitled to receive service credit consistent with Charter Section A8.519.

### Section 7. Association.

#### A. Payroll Deductions

47. The Association shall provide the Employee Relations Director and the City Controller with a complete list of the City classifications subject to this section represented by the Association, a statement of the membership dues for employees in each classification, and a list of employees in said classification who have signed authorizations for payroll dues deductions. Such list of represented classifications and statement of membership dues shall be amended as necessary. The Controller may take up to thirty (30) days to implement such changes. The Controller shall make required membership dues payroll deductions for the Association as designated from the list submitted by the Association. The Association shall pay the reasonable costs of this service. Such costs shall be established by the Controller of the City and County of San Francisco.
48. Effective the first complete pay period commencing after the receipt of dues authorization deduction forms by the Controller and each pay period thereafter, the Controller shall make membership dues deductions, as appropriate, from the regular periodic payroll warrant of each POA member described above.

#### B. Maintenance of Membership

49. Employees covered by this MOU who have voluntarily joined the Association, and have authorized payroll deduction of dues, initiation fees, premiums for insurance programs and political action fund contributions, shall, for the administrative convenience of the parties, be permitted to revoke authorization for the deduction of Association dues only during the month of May for any year. Any request for such revocation shall be delivered in person to the Office of the Controller or may be sent by U.S. mail to the Controller, whose current address is 875 Stevenson Street, San Francisco, CA 94103. The City shall deliver a copy of any revocation notice to the Association not later than July 1.

**ARTICLE I – REPRESENTATION**

**C. Agency Fees**

50. 1. Application. The provisions of this section shall apply to all police officers of bargaining unit P-1.
51. 2. Implementation. An agency fee shall be implemented within representation units or subunits when:
- a. Election
52. The Union has requested, in writing, an election on the issue, to be conducted by the State Conciliation Service and 50% plus one of those voting favor implementation of an agency shop, or
- b. 2/3 Membership
53. The Union makes a showing that 2/3 of the employees within the unit or subunit are dues-paying members of the Union, or
- c. New Employees
54. The Union requests, in writing, an agency fee be implemented for all employees hired after a date to be agreed to by the Union and the Employee Relations Division.
55. 3. Service Fee. All police officers of bargaining unit P-1 except as set forth below, shall, as a condition of continued employment, become and remain a member of the Association, or in lieu thereof, shall pay a service fee to the Association. The fair share service fee payment shall be established annually by the Association, provided that such fair share agency service fee will be used by the Association only for the purposes permitted by law. The Association shall give all non-member employees of affected bargaining units written notice of their obligation to either join or pay an agency fee as a condition of employment. After such notice and a time period agreed to by the parties, service fees from non-members shall be collected by payroll deduction pursuant to Administrative Code Section 16.90. Failure to comply with this section shall be grounds for termination. The Association, at its option, may elect to waive its rights to demand termination and instead utilize judicial process to compel payment.
56. 4. Financial Reporting. Annually, the Association will provide an explanation of the fee and sufficient financial information to enable the fair share service fee payer to gauge the appropriateness of the fee. The Association will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, not chosen by the Association, and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.
57. 5. Religious Exemption. Any employee covered by this provision who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National

## ARTICLE I – REPRESENTATION

Labor Relations Board to hold such objections to labor union membership shall, upon presentation of membership and historical objection, be relieved of any obligation to pay the required service fee. The Association shall be informed in writing of any such requests.

58. 6. Payment of Sums Withheld. Nine (9) working days following payday, the City will promptly pay over to the Association, less the fee for making such deductions, all sums withheld for membership or service fees. The City shall also provide with each payment a list of employees paying such service fees.
59. 7. The Union shall comply with the requirements set forth in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) for the deduction of agency fees. Annually, the Union shall certify in writing to the City that the content of the written notice meets the requirements set forth in this section and in Hudson.
60. 8. The provisions above pertaining to agency fee shall be eliminated if and when the United States Supreme Court issues a decision invalidating any right to collect agency fees from public employees.

### D. Indemnification

61. The Association agrees to indemnify and hold the City harmless for any loss or damage arising from the operation of this section.

### Section 8. Bulletin Boards and Distribution of Materials.

62. The Department shall reserve a reasonable amount of space on bulletin boards within police buildings for the distribution of Association literature. All posted literature shall be dated, identified by affiliation and author, and neatly displayed, and removed from the bulletin board by the Association when no longer timely. Except as stated below, the Department agrees that identifiable Association literature shall not be removed from said bulletin boards without first consulting with the station, bureau, or unit representative of the Association to determine if the literature should remain for an additional period of time. The Association shall not post literature that is discriminatory, harassing, or violates City policy or the law. The Department may remove this type of literature immediately and shall notify the Association of its removal.
63. Distribution of Association literature by any Association member shall be done so as not to interfere with or interrupt the performance of official police duties.

### Section 9. Lineups.

64. The Association's access to its members following lineups is governed by Appendix A.

## ARTICLE II. EMPLOYMENT CONDITIONS

### Section 1. Non-Discrimination.

65. The City and the Association agree that discriminating against or harassing employees, applicants, or persons providing services to the City by contract, including sworn and non-sworn employees, because of their actual or perceived race, color, creed, religion, sex/gender, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, age, political affiliation or opinion, gender identity, gender expression, sexual orientation, military or veteran status, or other protected category under the law, is prohibited. This paragraph shall not be construed to restrict or proscribe any rule, policy, procedure, order, action, determination or practice taken to ensure compliance with applicable law.
66. This section is not intended to affect the right of an employee to elect any applicable administrative remedy for discrimination proscribed herein. In the event that more than one administrative remedy is offered by the City and County of San Francisco, the Association and the employee shall elect only one. That election is irrevocable. It is understood that this paragraph shall not foreclose the election by an affected employee of any administrative or statutory remedy provided by law.
67. The parties recognize that in a disciplinary proceeding, or any other context in which EEO issues are administratively determined by the City or the Police Department, the City does not represent individual police officers. Accordingly, the parties recognize the Association has a duty to fairly represent all of its members and that this duty applies to POA members who are complainants in discrimination cases, as well as to POA members who may be accused of discriminatory conduct.
68. Neither the City nor the Association shall interfere with, intimidate, restrain, coerce or discriminate against any employee because of the exercise of rights granted pursuant to the Meyers-Milias-Brown Act.
69. It is understood and agreed that any disciplinary action against an employee that may be initiated or result from the application or interpretation of these provisions shall not be subject to the grievance and arbitration provisions of Article I, Section 5 of this Agreement. Any action grieved pursuant to this section and determined to be violative thereof may be set aside by the Chief of the Department or the Police Commission.
70. Paragraphs 65-69 shall be non-grievable except with respect to an asserted violation of paragraph 68.

### Section 2. Disabilities.

71. The parties agree that they are required to provide reasonable accommodations for persons with disabilities in order to comply with the provisions of the Americans With Disabilities Act ("ADA"), the Fair Employment and Housing Act ("FEHA") and all other applicable federal, state and local disability anti-discrimination statutes and further agree that this Memorandum will not be

## ARTICLE II - EMPLOYMENT CONDITIONS

interpreted, administered or applied in any manner which is inconsistent with said statutes. The City reserves the right to take any action necessary to comply therewith.

### Section 3. Personnel Files.

72. The City shall maintain personnel files for each employee. Employees or their authorized representatives have the right to examine the contents of their master personnel files maintained by the Personnel Division during business hours Monday through Friday excluding legal holidays. Adverse comments may not be placed in the employees' master personnel files without the employees' having acknowledged notice of the adverse comments on the face of the document prior to placement of the comments in the files. Employees may cause to be placed in their master personnel files responses to adverse material inserted therein and a reasonable amount of correspondence as determined by the Chief originating from other sources directly related to their job performance may be placed in employees' master personnel files.
73. Only persons authorized by the Commanding Officer of the Personnel Division may review an employee's master personnel file.
74. This section regarding employee access and authorized review applies to materials contained in files of cases classified as improper conduct in the Management Control Division and EEO Unit after the Chief determines to proceed with disciplinary action. All other access to the files at the Management Control Division and EEO Unit must be pursuant to a valid discovery motion filed and approved by the Police Commission or a court of competent jurisdiction except as provided in subsection D. below regarding sealed reprimands except where access is deemed by the City to pertain to investigations, EEO compliance, Consent Decrees or other legal or administrative proceedings.
75. Formal reprimands without further penalty will not be considered for purposes of promotion, transfer or special assignments after the formal reprimand has been in the employee's personnel file for two (2) years or after the earlier of the two time periods listed below have elapsed:
  76. 1. not later than three (3) years from the date the complaint against the officer is filed, absent requests for hearing, appeals, delays requested by the employee or the Union, and the tolling of time periods under Public Safety Officers Procedural Bill of Rights Act (POBR); or
  77. 2. not later than two (2) years from the notice of the intent to reprimand, absent requests for hearing, appeals, delays requested by the employee or the Union, and the tolling of time periods under POBR.
78. Formal reprimands with additional penalty more than five (5) years old will not be considered for purposes of promotion, transfer or special assignments.
79. All officers shall have the right to review their master personnel file and identify all such documents. Upon concurrence of the Commanding Officer of Personnel that such documents have been appropriately identified, they will be placed in an envelope, sealed and initialed by the officer. The envelope will be placed in the officer's personnel file and will be opened only in the event that



## ARTICLE II - EMPLOYMENT CONDITIONS

the officer is in the future subject to discipline or access is deemed by the City to pertain to investigations, EEO compliance, Consent Decrees or other legal or administrative proceedings.

### Section 4. Rights of Individual Employees.

80. An employee may not be disciplined or subjected to punitive action without written notice of the disciplinary action. The employee is entitled to receive a copy of the charges and material upon which the disciplinary action is based. This provision shall not be subject to the grievance and arbitration procedure set forth in this Agreement.
81. The City agrees to use the principle of progressive discipline in the application of punitive action where appropriate. The City is not precluded from imposing suspension and/or termination if the facts so indicate without first imposing lesser forms of punitive action. This provision shall not be subject to the grievance and arbitration procedure set forth in this Agreement.
82. The Department shall not subject an employee to examination by the Police Physician without informing the employee of the underlying reasons for the examination. An employee may seek an opinion of another physician of his/her choice and at his/her own expense and submit this supplemental report to the Police Physician. The Police Physician must consider the supplemental information in making a recommendation to the Chief of Police. The employee is entitled to receive a copy of the Police Physician's final recommendation. The Chief of Police will make the final decision as to the recommendation filed by the Police Physician.

### Section 5. Access to Records of Department of Police Accountability

83. It is agreed that a complainant's Department of Police Accountability (DPA) complaint form shall be released to the complainant upon request.
84. Notwithstanding any other provision of this Memorandum of Understanding, in the event a DPA investigative hearing is determined to be appropriate and is scheduled, the affected employee and the complainant, prior to said hearing and upon seventy-two (72) hours' advance notice, shall have access to all evidence not deemed to be confidential pursuant to the Police Commission rules. Such access shall consist of inspection of materials and, upon request, copies of materials for use by the employee and the complainant.
85. Review and receipt of evidence shall be permitted only upon the execution by the requesting party and his or her representative of a confidentiality statement approved by the Police Commission. The Police Commission shall monitor the application of this paragraph and shall implement policies and procedures designed to ensure compliance herewith.
86. Summary disposition reports, the format of which shall be set by the Police Commission and which shall include a brief description of the complaint and summary findings of fact, shall be prepared by the DPA in matters that are not sustained, as well as in those matters which are disposed of by the Chief of Police and do not result in a Police Commission hearing. These reports shall be available for public review and disclosure. Such reports shall not contain the name(s) of the complainant(s)

## ARTICLE II - EMPLOYMENT CONDITIONS

nor of the charged officer(s) nor contain any information which would (a) deprive a person of the right to a fair trial or an impartial adjudication; (b) disclose investigative techniques and procedures deemed confidential by the Police Commission; (c) disclose confidential information when disclosure is prohibited by any law; (d) endanger the life or physical safety of any person, including but not limited to, law enforcement personnel; or (e) result in an unnecessary invasion of the personal privacy of an individual.

87. The DPA, in conjunction with the Police Commission, shall develop procedures which may utilize face-to-face dispute resolution in appropriate cases. Use of these procedures will be voluntary and subject to the veto power of the DPA for the complainant or the affected employee.
88. Disputes regarding this section shall be resolved by utilization of existing rules and regulations and shall not be subject to the grievance and arbitration procedure contained in this Memorandum of Understanding.

### Section 6. Physical Fitness Program.

89. The physical fitness program as set forth in General Order 11.10 and as outlined in the Physical Fitness Program Information Booklet (revised July, 1993) shall remain in effect, and shall be available to all employees covered under this MOU.

### Section 7. Temporary Modified Duty Assignments.

90. Temporary modified duty assignments shall be administered in accordance with General Order 11.12. The parties agree that, except for matters related to compensation while engaged in temporary modified duty assignments, decisions made pursuant to General Order 11.12 shall not be grievable under the parties' MOU.

### Section 8. Seniority List.

91. The Department of Human Resources will generate a master seniority list by Civil Service rank and provide it to the Association by January 1<sup>st</sup> of each year. The Association shall submit objections or requests for adjustments to the seniority list to the Department of Human Resources within ten (10) business days of receipt of the master seniority list.
92. The Department of Human Resources shall consider any objections or requests on their merits and take any appropriate action. An employee's failure to challenge the accuracy of the master seniority list in January does not preclude the employee from making such a challenge at the time the list is being applied to the watch sign-up.

### Section 9. Trading Privileges.

## ARTICLE II - EMPLOYMENT CONDITIONS

93. An employee may trade his or her tour of duty with another employee of the same rank within his/her unit with the approval of his/her Commanding Officer, provided said trade results in no net increase in cost to the City and further provided that employees shall not exceed one trade for every two pay periods. Such trades shall be paid back within 90 days.

### Section 10. Watch Sign-Up.

94. A. Employees assigned to a station or unit shall be assigned to watches according to a semi annual seniority sign-up.
- B. Rules of the Sign-Ups.
95. Each unit/station will conduct two (2) seniority sign-ups per year as follows:
96. 1. The Chief of Police, or designee, will determine the size of each watch in advance of the sign-up.
97. 2. Employees will sign up for their choice of watch in order of seniority. The Commanding Officer, or designee, shall determine assignments.
98. 3. The results of the Sign-Up will take effect on the first day of the first pay period in the months of March and September of each year of this MOU.
99. 4. The Sign-Up period will commence thirty (30) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
100. 5. The Sign-Up period will close no sooner than seven (7) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
101. 6. Each unit/station will publish and post the final results of the Sign-Up no later than five (5) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
- C. Transfers Between Stations.
102. If an employee is transferred from one station to another by Department action, the employee's current watch choice continues until the next station sign-up.
103. If an employee transfers to another station at his/her own request, he/she forfeits his/her right to a particular watch, and may have to wait for the next station sign-up. If more than one employee transfers to the same station, seniority shall apply to watch assignments for the interim period.

**ARTICLE II - EMPLOYMENT CONDITIONS**

- D. Applicability of the Watch Sign-Ups.
104. 1. The seniority watch sign-up process will apply to assignments and watches as determined by the Chief of Police, or designee.
105. 2. Employees who are reassigned to another watch as a result of the semiannual seniority watch sign-up shall be entitled to their original vacation selection based on prior sign-up.
106. E. The District Station Commanding Officers, with the approval of their Deputy Chief, shall have the authority to assign up to fifteen percent (15%) of sworn personnel under their command to meet operational needs, without regard to seniority at each station including the Airport Patrol Division, for purposes of filling specialized and staff positions (i.e., permit investigation officer, plain-clothes cars, special duty or community relations officer) but not limited to them, when it is necessary to have an individual assigned to a special unit which requires experience or other articulable qualifications possessed by the employee to be assigned, and which experience or qualifications would not be attained by filling the assignment by seniority.
107. F. The District Commanding Officer may assign employees with the lowest qualifying seniority to another watch for the following reasons:
108. 1. Agreement of officer after conducting a canvass of employees of the station or unit.
109. 2. Need for non-probationary officers to work with probationary officers in order to field the platoon.
110. 3. At the request of an employee impacted by unforeseen conditions requiring a change in his/her watch occurring after one of the two watch sign-ups per year, the Commanding Officer may reassign the employee to another watch based on the needs of the Department.
111. G. For shift bidding and vacation bidding Departmental seniority will be utilized. Departmental seniority is the employee's original start date (i.e., beginning of employment with the Department or date of promotion to new rank).
- H. Solo Motorcycle Officers.
112. The following shall apply to Solo Motorcycle Officers in the ranks of "Police Officer."
113. 1. There shall be one Department-wide transfer list for Co. K Solos and the Airport Bureau Solos.
114. 2. For purpose of the seniority sign-ups, Solo Motorcycle Officers in Co. K and at the Airport Bureau will be treated as one unit.
115. 3. Any Solo Motorcycle Officer vacancies in either Co. K or the Airport Bureau will be offered to the next officer on the P-2 list. Any officer filling a vacancy from the P-2 list shall remain in that assignment until the next seniority sign-up, when he/she shall

## ARTICLE II - EMPLOYMENT CONDITIONS

participate in the seniority sign-up process. At that time any such officer may exercise his or her unit seniority to fill any vacancy in either unit.

116. 4. Employees shall not be on the Solo Motorcycle transfer list while currently assigned to a Solo Motorcycle Unit.
117. I. Watch sign-ups are not final until five (5) calendar days prior to adoption.

### Section 11. Vacation Sign-Up.

118. When using discretionary time-off, employees shall use accrued EH (Equivalent Holiday), FH (Floating Holiday), and/or PE (Physical Fitness Time) prior to using accrued VA (Vacation) and/or OU (Overtime Use). Employees who have reached maximum vacation time accrual limits are exempted from the application of this section.
119. Employees at each station or unit shall, by watch, sign up by seniority for vacation on an annual basis prior to the first full pay period in March of each year but in all cases after the first watch sign-up in any calendar year. After the date of this vacation sign-up, no employee's scheduled vacation may be displaced by a subsequent request by a more senior employee. An appropriate and sufficient number of vacation slots shall be made available so that all employees on a given watch may exercise their vacation rights.
120. Additionally, time shall be provided on such vacation sign-up to allow employees, by reverse seniority, to sign up for one week of compensatory time-off.
121. If an employee is transferred from one station or unit to another by Department action, his or her vacation choice shall continue. If an employee transfers to another station or unit by his or her request, the employee's choice of vacation may be forfeited based on staffing needs at the new assignment.

### Section 12. Filling Vacancies.

122. When a vacancy occurs in a promotional rank, an eligible list exists for that rank, a position exists in the budget for the promotion and an appointment is made, the promotional appointment shall be made immediately on a permanent basis. Upon request, the City will provide the POA with the number of all available, authorized, budgeted positions for each promotive rank (i.e., sergeant, lieutenant, and captain) covered by this Agreement.

### Section 13. Non-Emergency Special Event Assignments.

123. This Department is frequently called upon to provide police services for one-time special events such as, but not limited to, parades, marathons, community festivals, and bicycle races. These events take place on City streets and usually require large numbers of police officers.

## ARTICLE II - EMPLOYMENT CONDITIONS

124. In order to minimize the impact on the Department's ability to provide police services at the district stations, it is necessary to utilize off-duty personnel to augment the normal complement of officers assigned for duty on the day of the event.
125. The Department shall determine the number of officers that are needed to police the special event and utilize the following:
  1. On-duty personnel working their regular watch who can be spared from normal police duties within the district.
  2. Officers Working EWW. This group will include officers working beyond their normal tour of duty and officers working their normal watch off.
128. An employee's regular watch shall not be changed more than three (3) hours to avoid the payment of overtime in the policing of an event of this sort except that management may adjust regular watches up to seven (7) hours for July 4<sup>th</sup>, October 31<sup>st</sup>, and December 31<sup>st</sup> without incurring overtime costs.
129. Specialized units in the Department (Tactical, Solos, Hondas, etc.) are an exception to this policy in that the very nature of their assignment requires flexible scheduling. EWW will be used for these units only if policing the event requires additional manpower beyond their normal operating complement.
130. Employees who are called in to work during their normal watch off pursuant to this Section shall be granted a minimum of four (4) hours' pay (or compensatory time-off pursuant to Article III., Section 2 of this Agreement) at the applicable rate or shall be compensated for all hours actually worked at the applicable rate, whichever is greater. The Department will make every reasonable effort to call-in only those employees whose service is necessary for the special event, and shall release employees when their service is no longer reasonably required.
131. Before preparing any operations order, District Station Commanding Officers shall confer with the Chief's designee as to whether or not this Special Order covers a specific event scheduled to occur within their district.

### Section 14. Meals and Breaks During Demonstrations.

132. The Department shall provide meals or a reasonable meal break time for employees assigned to special events where active duty thereat continues for more than four (4) consecutive hours. If the Department fails to or is unable to provide such meals, the Association may do so and will be reimbursed for the reasonable cost thereof on such occasions by the Department. This provision is subject to the development of procedures by the Department for the reimbursement for the cost of meals provided by the Association.
133. The Department shall assure that employees have reasonable access to restroom facilities during special events where active duty thereat continues for more than four (4) consecutive hours.

## *ARTICLE II - EMPLOYMENT CONDITIONS*

### Section 15. Courtesy Parking System for Court Attendance.

134. The Department agrees to maintain the current courtesy parking system for employees while attending court as a result of a subpoena on behalf of or in defense of the City or the Department when attendance is in the Hall of Justice.

### Section 16. District Station Parking.

135. The City will make a reasonable effort to provide adequate parking to employees at the district stations.

### Section 17. Code Book.

136. The Department shall post a complete set of Code Books and Department Orders on the Department's intranet. The posting shall include, but not be limited to, the following: Penal Code, Police Code, Vehicle Code, Park Code, Health Code, Fire Code, Training Bulletins, Information Bulletins, Special Orders, and General Orders. The Department shall also keep one complete set of Code Books and Department Orders in each station's equipment room for use by all employees through the station keeper or his/her designee.

### Section 18. Employee Training Reimbursement Program.

137. The City will contribute five thousand dollars (\$5,000) annually to the Employee Tuition Reimbursement Program for the exclusive use of employees covered under this MOU.
138. Subject to available monies, an employee may submit a request for tuition reimbursement up to five-hundred dollars (\$500) during each fiscal year.

### Section 19. Canine Ownership.

139. The officer/handler of a canine that will be retired from duty may submit a request for ownership to the Department where all of the following conditions are met:
1. The Department owns the canine;
  2. The officer/handler informs the Department of his/her interest in owning the canine in writing at least 14 business days before the canine's retirement; unless the canine is retired on shorter notice, in which case the officer/handler shall provide notice as soon as reasonably possible.
  3. The officer/handler signs a waiver and hold harmless agreement provided by the Department and approved by the City Attorney's Office;

## ARTICLE II - EMPLOYMENT CONDITIONS

4. The officer/handler agrees to accept immediate and complete ownership and control of and financial and other responsibility for the retired canine effective the retirement date;
  5. The officer/handler agrees to cooperate with the Department in effecting the transfer.
140. Notwithstanding the above, the Chief of Police, at his/her sole discretion, may prohibit the transfer of ownership of any retired canine.

### Section 20. Recruitment.

#### A. Lateral Signing Bonus

141. Laterally hired employees (i.e., fully sworn peace officers hired through the Lateral Entry Program) shall receive a \$2,500 signing bonus that shall be paid within 30 days after the employee's successful completion of the FTO program, and a \$2,500 signing bonus that shall be paid within 30 days after the employee's successful completion of his/her probationary period as a Police Officer, if the employee is still employed at the time the signing bonus is due to be paid.
142. This bonus is not considered "salary attached to the rank" and shall not be included for purposes of retirement benefit calculations and contributions in accordance with those Sections.

#### B. Recruitment Committee

143. The City and the Union agree to form a joint labor-management committee to improve the City's recruitment of highly-qualified police officers. The committee will include representatives from Police Department management, the POA, and the Department of Human Resources. For fiscal year 2006-07 and thereafter, the Police Department will receive an annual allocation of \$250,000 to fund committee activities, programs and expenses. These funds may be used to develop enhanced recruitment and marketing programs, applicant preparation activities, and innovative new recruitment and hiring strategies. These funds may also be used for cultural competency and other training for new and experienced officers through City University or similar resources.

### Section 21. Sergeants Rotation Pilot Program.

144. The parties have agreed to discuss the creation of a Sergeants Rotation Pilot Program.
145. The parties further agree to discuss this program in the interest of promoting career development for all sergeants. The City will only implement the program upon the mutual agreement of the parties.

### Section 22. Health & Safety Committee.

146. The parties agree to convene a Health & Safety Committee bi-annually to discuss health and



## ARTICLE II - EMPLOYMENT CONDITIONS

safety issues and potential updates to the Department's "Injury and Illness Prevention Program."

### Section 23. Substance Abuse Testing.

147. It is the policy of the City and County of San Francisco to maintain a safe, healthful and productive work environment for all employees. To that end, the City will act to eliminate any substance abuse. Substance abuse may include abuse of 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.

148. This provision will be administered consistent with any General Orders regarding substance abuse. Nothing in this provision is intended to make discipline related to substance abuse subject to the grievance procedure.

#### A. Mandatory Testing

149. Mandatory physical examinations for sworn employees shall include the submission of a urine specimen for routine analysis and screening for the presence of drugs or alcohol. Analysis and screening for drugs and alcohol is required for sworn employees in the following circumstances:

150. 1. Prior to the expiration of a newly hired employee's twelve (12) month probationary period.

151. 2. For employees being promoted to a higher rank, prior to the effective date of promotion.

152. 3. Prior to return from:

153. a.) medical leaves of absence in excess of thirty (30) calendar days, and

154. b.) unpaid leaves of absence in excess of ninety (90) calendar days.

155. 4. When a pattern of sick leave develops which indicates a reasonable suspicion of substance abuse.

156. 5. When there is reasonable suspicion that an employee is under the influence of drugs or alcohol while on duty.

157. 6. In the event an employee is involved in an on-duty vehicular accident resulting in death or an injury requiring transport for medical treatment. In such cases the employee will have the option for either a blood or urine analysis and screening. An "injury requiring transport for medical treatment" is an injury that results in the medical transport by ambulance of any person involved in the accident from the accident scene; or an injury to any person involved in the accident where that person declines transport by ambulance from the accident scene against medical advice (also known as "AMA"). If testing is required under this section, the SFPD shall direct the involved SFPD vehicle operator to undergo testing within twelve (12)

## ARTICLE II - EMPLOYMENT CONDITIONS

hours of the time of the accident, and shall conduct testing of the involved SFPD vehicle operator within twenty four (24) hours of the time of the accident. If testing is not directed and conducted within these time periods (assuming no interference by the SFPD vehicle operator that delays the SFPD's directive or testing), testing of the involved SFPD operator is not required or permitted under this paragraph.

### B. Reasonable Suspicion

158. Reasonable suspicion as used within this section is defined as a belief based on objective and articulable facts sufficient to lead a reasonable supervisor to suspect that an employee is under the influence of drugs or alcohol, such that the employee's ability to perform the functions of the job safely and effectively is impaired or reduced.
159. 1. Examples of situations in which there may be reasonable suspicion include but are not limited to:
160. a. A pattern of documented abnormal or erratic behavior;
161. b. The direct observation of drug or alcohol use; or a report 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;
162. c. The 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, etc.); or
163. d. A work-related incident in conjunction with other facts which together support reasonable cause.

### C. Employee Responsibilities

164. An employee must not:
165. 1. report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
166. 2. possess or use, or have the odor of alcohol or drugs on his/her breath during working hours; or
167. 3. directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee is on duty or on paid stand-by.
168. An employee must:
169. 1. submit immediately to requests for alcohol and/or drugs analysis when requested by an

## ARTICLE II - EMPLOYMENT CONDITIONS

authorized representative of the department director, or designee, and may request union representation;

- 170. 2. 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
- 171. 3. provide, within 24 hours of request, a current valid prescription in the employee's name for any drug or medication identified when a drug screen/analysis is positive.

### D. Management Responsibilities and Guidelines

- 172. 1. Managers and supervisors are responsible for consistent enforcement of this provision.
- 173. 2. The Department 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.
- 174. 3. Managers and supervisors shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
- 175. 4. Managers and supervisors shall not physically search employees without consent or a valid warrant.
- 176. 5. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
- 177. 6. One of the supervisory employees who made the reasonable suspicion determination shall inform the employee of the requirement that he/she undergo testing in a confidential manner.

## ARTICLE III. PAY, HOURS AND BENEFITS

### Section 1. Wages.

#### A. General Wage Increases:

178. Employees shall receive the following base wage increases:

July 1, 2018 – 3%

July 1, 2019 – 3%

#### **The City and POA had previously negotiated the following:**

**1.** Effective July 1, 2020, represented employees will receive a base wage increase of 2%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021.

**2. The City and POA agree that subsection (1) above is superseded, and the 2% raise originally due on July 1, 2020 and delayed to the pay period including January 1, 2021 will be deferred to the close of business on June 30, 2022.**

#### **The City and POA had previously negotiated the following:**

**1.** Effective January 1, 2021, represented employees will receive a base wage increase of 1%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on January 1, 2021, will be delayed by six (6) months and be effective close of business June 30, 2021.

**2. The City and POA agree that subsection (1) above is superseded, and the 1% wage increase originally due on January 1, 2021 and delayed to the close of business on June 30, 2021 will be deferred to the close of business June 30, 2023.**

**Effective July 1, 2021, represented employees will receive a base wage increase of 3.0%, except that if the March 2021 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2021-2022 that exceeds \$200 million, then the base wage adjustment due on July 1, 2021, will be delayed by approximately six (6) months, to be effective on January 8, 2022.**

Effective July 1, 2022, represented employees will receive a base wage increase of 3.0%, except that if the March 2022 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2022-2023 that exceeds \$200 million, then the base wage adjustment due on July 1, 2022, will be delayed by approximately six (6) months, to be effective on January 7, 2023.

Parity

The parties agree that if any new general base wage increase is agreed to, granted or awarded to fifty percent plus one (50% plus 1) of employees covered by the Public Employee Committee of the San Francisco Labor Council during the twelve (12) months following the approval of the First Amendment to this 2018-2021 Agreement, which wage increase would apply in Fiscal Years 2020-2021, 2021-2022 or 2022-2023, then the City shall provide that general base wage increase to the members of this bargaining unit in the same amount and on the same effective date. This provision does not apply to any existing wage increases or agreement on deferral of any existing wage increases.

B. Probationary Period and Step Advancement

1. Probationary Period

179. A Class Q-2 officer shall be required to complete a 12-month full duty probationary period that shall begin the day following completion of the prescribed department field training officer program.
180. Except as specified in this section, the time to complete the required 12-month full duty probationary period shall be extended, for a period not to exceed 126 weeks from the date of appointment by: (1) the total time of absence for all periods of unpaid authorized leave; (2) all periods of disciplinary suspension; (3) all periods of sick leave, with or without pay; and (4) all periods of administrative assignments pending the results of administrative investigations.
181. The time to complete the required 12-month full duty probationary period shall be further extended for all periods of temporary modified duty or disability leave. Such extension may not exceed 52 weeks and, except as provided below, the total time to complete the required 12-month full duty probationary period shall not exceed 178 weeks from the date of appointment.
182. The time to complete the required 12-month full duty probationary period shall be extended, without any limitation, for all periods of time the officer is required to serve on active military duty or on jury duty.
183. Advancement to step 2 shall be made upon satisfactory completion of the probationary period.
184. The probationary period for all other ranks shall be 12 months.

### ARTICLE III - PAY, HOURS AND BENEFITS

#### 2. Subsequent Step Advancement

185. a. Advancement to subsequent steps shall be made upon completion of one year of satisfactory service at that step. Salary adjustments shall be made effective the first full pay period following the effective date.
186. b. Satisfactory Performance: An employee's scheduled step increase may be denied if the employee's performance has been unsatisfactory to the City. The Chief shall provide an affected employee at least sixty (60) calendar days' notice of his/her intent to withhold a step increase. However, if the unsatisfactory performance occurs within that time period, the Chief shall provide reasonable notice of his/her intent to withhold a step increase at that time.
187. An employee's performance evaluation(s) may be used as evidence by the City and/or an affected employee for the purpose of determining whether a step advancement should be withheld.
188. If an employee's step advancement is withheld, that employee shall next be eligible for a step advancement upon his/her salary anniversary date in the following fiscal year. An employee's salary anniversary date shall be unaffected by this provision.
189. The denial of a step increase is subject to the grievance procedure; provided, however, that nothing in this section is intended to or shall make performance evaluations subject to the grievance procedure.

#### C. Lateral and Current Permanent City Employees Step Plan and Salary Adjustments

190. Subject to the approval of the Police Chief, a current permanent City employee who has completed the probationary period and or a lateral new employee who is appointed to a Q-2, Q-3, or Q-4 rank shall enter at the salary step which is the same or closest to the salary which is immediately in excess of that received in their prior appointment provided that such salary shall not exceed the maximum of the salary schedule.
191. However, advancement to the next step in the Q-2, Q-3, or Q-4 rank shall not occur until the employee has served the satisfactory time as prescribed herein for an entry-level police officer to move to that step and satisfactory completion of the probationary period.

#### Section 2. Overtime and Compensatory Time-Off.

##### A. Overtime

192. The Chief of Police or designee may require employees to work longer than the normal work day or longer than the normal work week. Any time worked by an employee who holds a permanent rank below the rank of Captain under proper authorization of the Chief of Police or his/her designated representative or any hours suffered to be worked by an employee who holds a permanent rank below the rank of Captain in excess of the regular or normal work day or week shall be designated as overtime and shall be compensated at one-and-one-half times the

### ARTICLE III - PAY, HOURS AND BENEFITS

base hourly rate. Vacation leave and Legal Holidays shall be considered hours worked for overtime purposes. Mandatory, unscheduled overtime shall be calculated at the one-and-one-half (1.5) overtime rate.

193. The parties acknowledge that, for purposes of calculating overtime payable under the Fair Labor Standards Act (FLSA), 29 USC Section 207k, the work period for all sworn members is a 28-day period (171 hours). The implementation of the FLSA work period for all sworn members began at 0001 hours on Saturday, April 12th 1986 and continues to repeat each 28 days thereafter.
194. The parties further acknowledge that Captains are exempt from the application of the FLSA as permitted by 29 USC Section 213.
195. Captains are frequently required to work in excess of forty (40) hours per week to perform the job duties of their positions. In recognition of this work requirement, Captains will receive an eight percent (8%) wage increase in lieu of earning overtime or compensatory time off. Lieutenants on a “like work, like pay” Captain assignment will not be eligible for overtime. This provision shall not preclude Captains from compensation as defined in Section 10B of the Administrative Code.
196. Employees shall not be eligible for 10B overtime assignments during hours on SP, VA, FH, In-Lieu, or DP.

**XXX. Effective January 1, 2021, employees shall not be eligible for 10B overtime assignments during: (a) hours on which an employee is regularly scheduled to work; or (b) if they have used more than twenty (20) hours of paid sick leave (pay code “SLP”) in the prior three months as reviewed on a quarterly basis per the schedule below.**

<b><u>Quarter</u></b>	<b><u>SLP Review</u></b>	<b><u>10B Period</u></b>
<b><u>1</u></b>	<b><u>9/1 – 11/30</u></b>	<b><u>1/1 – 3/31</u></b>
<b><u>2</u></b>	<b><u>12/1 – 2/28</u></b>	<b><u>4/1 – 6/30</u></b>
<b><u>3</u></b>	<b><u>3/1 – 5/31</u></b>	<b><u>7/1 – 9/30</u></b>
<b><u>4</u></b>	<b><u>6/1 – 8/31</u></b>	<b><u>10/1 – 12/31</u></b>

**As an example, for illustrative purposes only, an employee is eligible for 10B overtime in the first quarter of a calendar year (January 1 through March 31) if the employee has not used more than 20 hours of SLP in the period September 1 through November 30 of the prior year.**

**XXX. For purposes of (b) in the preceding paragraph, the City shall count sick leave paid (SLP) regardless of the reason for which it is used (e.g., sick with a cold; dentist appointment) with the following exceptions:**

- **Birth or adoption of a child; and**

- Bereavement leave pay (i.e., pay code “BLP”) due to the death of a spouse/domestic partner, parent, child or sibling. The SLP calculation shall include BLP for other reasons, for example, BLP for the death of a grandparent shall count to the calculation under (b).
- The SLP calculation shall not include:
  - COVID-19 Sick Pay (pay code COV)
  - Federal COVID-19 Sick Pay (pay codes ESP, ESU, ESF)
  - Unpaid Leave (pay code UPL)
  - Unpaid Sick Leave (pay code SLL)
  - Disability Leave Pay (pay code DLP) – the City will not consider SLP hours taken in conjunction with the filing of a disability claim but only if the employee affirmatively files the disability claims with WC and Payroll to ensure the SLP hours are excluded. If after review the disability claim is denied, the City will calculate those SLP hours in the quarter in which the determination on the disability claim is made (e.g., if an employee used SLP hours in February and the disability claim was denied in mid-May, the SLP would be included in the calculation for the April, May and June quarter).
  - Paid Parental Leave (PPL)

B. Compensatory Time-Off

197. 1. Employees who are required or suffered to work overtime shall receive paid overtime. However, employees may request to earn compensatory time-off at the rate of time-and-one-half in lieu of paid overtime, subject to the approval of the Chief of Police or designee and except as provided below:
198. a. Employees may not accrue more than 480 hours of compensatory time-off. Employees with more than 480 hours of compensatory time-off as of July 1, 2003 may not accrue additional compensatory time-off until and unless their compensatory time-off balances fall below 480 hours.
199. b. Effective June 30, 2010, employees may not accumulate a balance of compensatory time in excess of 300 hours. Any employee who has a compensatory time balance in excess of 300 hours on June 30, 2010, may maintain his or her compensatory time balance, but will not accrue any additional compensatory time until the balance drops below 300 hours.
200. c. Captains with existing compensatory time off balances in excess of 480 hours as of June 30, 2003 may continue to carry such balances provided that such balances may not exceed 1500 hours as of June 30, 2005, and 1300 hours as of June 30, 2007. For those occupying this rank, compensatory time-off balances in excess of these amounts on the dates set forth shall be forfeited. Captains newly hired or promoted into such ranks on or after July 1, 2003 may not accrue more than 480 hours of compensatory time-off.



**ARTICLE III - PAY, HOURS AND BENEFITS**

201. d. Effective July 1, 2008, an employee that is promoted to a higher rank shall have his or her compensatory time balances paid out at the lower rank prior to promotion; however, at his/her option, he/she may maintain up to 80 hours accrual.
202. e. The City has the right to pay off accrued compensatory time off above 480 hours at its discretion, so long as such a pay off is uniform, by percentage, as to all employees within one of the four bureaus (i.e., FOB, Admin., Investigations, Airport).
203. 2. Employees shall provide the Department with 72 hours notice when requesting use of compensatory time-off. Compensatory time-off requests shall not be denied, except in writing when use of compensatory time-off will unduly disrupt operations or when an employee fails to provide 72 hours notice.

Section 3. Holidays.

204. A. Employees are entitled to the following holidays each year with pay:

New Year's Day	Fourth of July
Martin Luther King, Jr.'s Birthday	Labor Day
Indigenous Peoples Day & Italian American Heritage Day	Thanksgiving Day
Veteran's Day	The Day after Thanksgiving
Presidents' Day	Christmas Day
Veteran's Day	Four (4) floating holidays each
Memorial Day	fiscal year

205. In addition, included shall be any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States.
206. The above floating holidays are to be taken on days selected by the employee subject to the approval of the Department which shall not be unreasonably withheld. No compensation of any kind shall be earned or granted for floating holidays not taken. Floating holidays received in one fiscal year but not used may be carried forward to the next succeeding fiscal year. The number of floating holidays carried forward to a succeeding fiscal year may not exceed the total number of floating holidays received in the previous fiscal year. Floating holidays may be taken in hourly increments up to and including the number of hours contained in the employee's regular shift.
207. B. Employees who are required to work on any of the above-listed holidays, except floating holidays, shall receive additional compensation at the rate of time-and-one-half, or compensatory time at the rate of time-and-one-half at the employee's option pursuant to Article III., Section 2 of this Agreement.

### ARTICLE III - PAY, HOURS AND BENEFITS

208. C. Employees working a work week other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regularly scheduled days off. Employees whose holidays are changed because of shift rotations shall be allowed another day off if a legal holiday falls on one of their days off.
209. D. If the provisions of this section deprive any employee of the same number of holidays that an employee receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the employee and the appropriate supervisor with the approval of the appointing officer. In no event shall the provisions of this section result in such employee receiving more or less holidays than an employee on a Monday through Friday work schedule.
210. E. This section shall not modify existing holiday compensation practice.

#### Section 4. Premiums.

211. There shall be no pyramiding of premiums in this section (i.e., each premium shall be calculated against the base rate of pay). Premiums shall be provided to employees as follows:
- A. Acting Assignment Pay (Like Pay for Like Work)
212. Eligibility for acting assignment pay will be determined as follows:
213. a. If the senior ranking member on duty, commanding officer, night supervising captain or weekend duty captain determines a position is to be filled temporarily by an employee in the next lower rank, the employee temporarily filling that position shall be compensated at the salary of the rank being filled for the time worked in that temporary position, provided that no member holding the temporarily filled rank is working in the assigned unit on the same watch (i.e., double day). The employee beginning the acting assignment cannot be displaced by a more senior employee of the same rank who begins their shift after the acting assignment has begun.
214. b. Captains who are required to perform duties of the next highest rank are not entitled to receive acting assignment pay compensation unless they receive prior approval from the Deputy Chief of the employee's respective bureau. If the Deputy Chief of the employee's respective bureau determines a position is to be filled temporarily by an employee in the next lower rank, the employee filling that position shall be compensated at the salary of the rank being filled for the time worked.
215. c. The employee filling a position must be permanent. Absent the commanding officer being able to articulate specific reasons for not selecting the senior employee, seniority in rank shall control. The Chief of Police, or designee, however, may designate officers (including commissioned officers), to temporarily fill vacancies caused by officers in the next highest rank who are off on long term leave status or have retired.

**ARTICLE III - PAY, HOURS AND BENEFITS**

216. d. For the midnight hours (i.e., 0100 and 0500 or 0200 and 0600) when no Lieutenant is scheduled to work, the Sergeant assigned to fill the Lieutenant position pursuant to subsection a will be compensated at the Lieutenant rate. No Police Officer, however, will be permitted to fill the position of the Sergeant serving as a Lieutenant.
217. e. An employee entitled to receive acting assignment pay compensation must complete a "Compensation Request/Equal Pay" (SFPD 319) card for the hours actually worked and submit the card to Payroll by the end of the pay period.
218. f. The completed card must include the name and rank of the person replaced, if any, the beginning and ending dates and times of the acting assignment pay status and the actual dates circled on the back of the card or in accordance with any automated or alternative procedures established by the Police Department.
219. g. Upon designation by the Chief of the Department that an assignment shall be for longer than thirty (30) calendar days, the employee performing the duties of a higher rank shall receive the compensation of the higher rank for the duration of the assignment (including paid leave).
220. All of the above conditions must be met before acting assignment compensation can be approved. In the normal absence of a superior officer, the senior ranking officer on duty will be in charge, but will not be expected to perform the duties of the higher rank.

**B. Field Training and Training Unit Coordinator Pay**

**1. Field Training**

221. Employees assigned to Field Training Officer or Field Training Sergeant responsibilities shall receive the following premiums while training:

Officer (Q2-Q4)	\$550.00 Per Pay Period
Supervisor (Q50-Q52)	\$400.00 Per Pay Period
Station Coordinator (Q50-Q52)	\$125.00 Per Pay Period

222. Additionally, when a class is in the FTO program, certified FTO police officers and sergeants assigned to the FTO office shall be eligible for FTO premiums described above.

**2. Training Unit Coordinator Pay**

**ARTICLE III - PAY, HOURS AND BENEFITS**

223. Employees assigned to Training Unit Coordinator responsibilities shall receive \$125.00 per pay period.

224. Employees shall no longer receive compensatory time-off for Training Unit Coordinator responsibilities. Field Training and Training Unit Coordinator Pay shall not be included for purposes of retirement benefit calculations or contributions.

**C. Bomb Squad/SWAT Team Pay**

225. Employees assigned to the Bomb Squad or the SWAT team shall receive a premium of 5% biweekly. Employees assigned to both the Bomb Squad and the Swat Team shall receive a premium of 5% for one of the two assignments, but not both. This premium shall not be included for purposes of retirement benefit calculations or contributions.

**D. Specialist Pay**

226. An employee designated as a Specialist and assigned to the Specialist Team shall receive a premium of three percent (3%) biweekly. This premium shall not be included for purposes of retirement benefit calculations or contributions. Specialists are subject to changes in watches and assigned work locations for operational reasons. The number of Specialist positions available per shift or location shall be determined by the Chief or his/her designee.

**E. Motorcycle Pay**

227. Employees below the rank of captain assigned to Motorcycle and Honda units shall continue to receive a premium in an amount in accord with current practice pursuant to Charter Section A8.405(b). It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees below the rank of captain assigned to Motorcycle and Honda units covered by this Agreement and shall be included for purposes of retirement benefit calculations or contributions.

**F. Peace Officer Standards Training (POST) Certificate Pay**

228. 1. Active officers who obtain sufficient education and experience to meet the minimum qualifications of the ranks containing a POST certificate requirement shall be appointed to such ranks within thirty (30) days after they present to the Appointing Officer evidence that they possess the POST certification required for the rank as follows:

<u>Rank</u>	<u>Basic</u>	<u>Intermediate</u>	<u>Advanced</u>
Police Officer	Q-2	Q-3	Q-4
Assistant Inspector	Q-35	Q-36	Q-37
Sergeant	Q-50	Q-51	Q-52
Inspector	0380	0381	0382
Lieutenant	Q-60	Q-61	Q-62
Captain	Q-80	Q-81	Q-82

**ARTICLE III - PAY, HOURS AND BENEFITS**

229. A. Effective July 1, 2018, the rate of pay for the rank requiring intermediate POST shall be 5% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 7% higher than the rate of pay for the rank requiring basic POST.
230. B. Effective July 1, 2019, the rate of pay for the rank requiring intermediate POST shall be 6% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 8% higher than the rate of pay for the rank requiring basic POST.
231. 2. It is the mutual understanding of the City and the Association that the compensation attached to those ranks for which a POST certificate is required is not an increase in the general rate of remuneration for the ranks or positions of Q-2, Q-35, Q-50, 0380, Q-60 and Q-80, within the meaning of the Charter of the City and County, including but not limited to Section A8.559-6.
232. Should any retiree or other party initiate litigation challenging this mutual interpretation, and the mutual intent of these parties, and seek to obtain an adjustment of allowances for any Police Department retirees pursuant to the Charter of the City and County based upon this Agreement, the SFPOA shall fully support the defense of such claims by the City and County, and shall take appropriate legal steps to intervene in, and become party to, such litigation and in such litigation will fully support the mutual intention of the parties as described in this Agreement.
233. The parties and each and every individual employee specifically agree and recognize that this Agreement creates no vested rights. Should any final judgment by superior court or court of competent jurisdiction at any time adjudge and decree that retirees are entitled to an adjustment of their allowances as a result of the establishment of these ranks, then the Agreement which created these ranks and set a new base rate for such ranks to be included within the rate of remuneration for pension calculation purposes shall be null and void, and shall cease immediately. If such a judgment issues, the parties further hereby agree that the base pay rate and premium of each appointee to these ranks shall retroactively revert to the then current base rate of pay and to the premium eligibility provided by the Memorandum of Understanding prior to the creation of these ranks. The parties also agree to retroactively recalculate the retirement contribution and allowance of such officers as if this agreement had never been in effect. Provided, however, that if such a recalculation should occur, no bargaining unit employee who had received compensation based on the rates of pay for these ranks shall be obligated to pay back any monies which they had received between the effective date of their appointment and the time of such recalculation. Thereafter, the City and the Association shall mutually engage in meeting and conferring in order to reach agreement on alternative benefits
- G. Retention Pay

**ARTICLE III - PAY, HOURS AND BENEFITS**

234. Employees who possess an intermediate POST certificate or higher and have completed the requisite years of service as a sworn member of the Department or Airport Bureau shall receive the following retention pay:

235. Effective July 1, 2018, eligible employees shall receive:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
23	2%
30	additional 4% (6% total)

**235a. The City and POA had previously negotiated the following:**

236. 1. Effective July 1, 2020, eligible employees shall receive the following retention pay, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the increase in retention pay on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
10	1%
15	additional 2% (3% total)
20	additional 2% (5% total)
25	additional 2% (7% total)

**2. The City and POA agree that the effective date in subsection (1) above is superseded, and the effective date of the retention pay premium due in the pay period including January 1, 2021 shall be deferred until the close of business June 30, 2022.**

237. Eligibility for retention pay is subject to the following conditions and limitations:

238. a. ~~employees must have worked and continue to work (regular paycode 'WK') not less than seventeen hundred (1,700) hours in an on-going, consecutive (rolling) twelve (12) month period;~~

239. b. employees that have been issued a suspension of eleven (11) or more days during the preceding twelve (12) months shall not be eligible; and

c. employees must have a POST intermediate certificate or higher.

240. Retention pay shall be included for purposes of retirement benefit calculations and contributions as permitted by the Charter. It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who completed the above defined conditions.

### ARTICLE III - PAY, HOURS AND BENEFITS

#### H. Experienced Officer Incentive Pay

241. To ensure each district station is adequately staffed with senior officers at night, the most senior officer and the most senior sergeant (i.e., seniority in rank) at each district station and the Patrol Division of the Airport Bureau and on each watch with twenty-three (23) or more years of service shall receive a premium in the amount equal to 2% of base pay as additional incentive to work night duty assignments, subject to the following conditions and limitations:
242. 1. Night duty assignments are defined as 2100-0700 hours (9:00pm-7:00am);
243. 2. The premium shall be limited to the Patrol Division of the Airport Bureau and to night duty field assignments in FOB District Stations. (Station duty and station keeper assignments shall not be eligible for Experienced Officer Incentive Pay);
244. 3. Only the ranks of police officer (Q2-Q4) and sergeant (Q50-Q52) shall be eligible to receive Experienced Officer Incentive Pay;
245. 4. If the senior officer on a watch is off-duty, then the next senior officer with twenty-three years or more of service shall be eligible;
246. 5. Employees that have been issued a suspension (whether the suspension was served or held in abeyance) in the three years immediately preceding shall not be eligible;
247. 6. Experienced Officer assignments shall be for a minimum of twelve (12) months;
248. 7. Employees shall only receive Experienced Officer Incentive Pay for actual hours worked.
249. In accordance with the provisions of Charter Section A8.597-1, this premium shall be included for purposes of retirement benefit calculations and contributions. This amount is not considered "salary attached to the rank" as defined by Charter Sections A8.595-1, A8.559-1, A8.558 and A8.544.

#### I. Night Shift Differential

250. Night shift differential shall be paid at the rate of six and one-quarter percent (6-1/4%) more than the base rate for hours actually worked between the hours of 6:00 p.m. and 6:00 a.m. This night differential shall not be included for purposes of retirement benefit calculations or contributions.

#### J. Bilingual Pay

251. Bilingual pay, in the amount of eighty dollars (\$80) biweekly, shall be paid to employees who have been certified by the Department of Human Resources as having proficiency in translating to and from one or more foreign languages, as designated by the City, including sign language for the hearing impaired and Braille for the visually impaired. Upon the approval of his/her

### ARTICLE III - PAY, HOURS AND BENEFITS

supervisor, and subject to Department of Human Resources guidelines, the employee shall receive such pay when they are required to utilize such skills. Bilingual pay shall not be included for purposes of retirement benefit calculations or contributions. Effective January 1, 2019, at the City's discretion, an employee may be required to recertify not more than once annually in order to continue receiving the pay.

#### Section 5. Other Pays.

##### A. Canine Duty

252. Employees assigned to canine duty shall receive additional compensation bi-weekly equal to 5% of base wage as compensation for off duty time authorized and expended in the care and maintenance of the assigned canine, including feeding, grooming, exercising and cleaning up after the canine. This amount has been calculated by the parties to represent approximately eight hours of overtime per week paid at one and one-half times the hourly rate of the federal minimum wage. This extra compensation is not to be considered base pay or premium pay, nor shall it be included for purposes of retirement benefit calculations or contributions.
253. In addition to the above referenced overtime compensation for the ordinary and extraordinary care of the canine and, as authorized by the Department, the City will provide for basic canine food and supplies and shall provide for all appropriate veterinary care through approved City vendors. The City will reimburse other expenses reasonably and customarily incurred in the maintenance and care of the dog. Employees assigned to the Airport Bureau who perform canine duties shall be provided with vehicles for transportation of canines from their home to work and back.

##### B. Standby Pay

254. Employees, who as part of the duties of their positions are required by the Chief of Police or designee to be on standby when normally off duty and to be instantly available to return to work to perform their duties, shall receive pay at the rate equivalent to two (2) hours of their regular rate of pay for each assignment that begins on a regularly assigned work day, and three (3) hours of their regular base rate of pay for each assignment that begins on a regularly scheduled day off. The duration of the assignments shall be determined by the Chief of Police or designee based upon the operational needs of the Department, but shall not exceed twenty-four (24) hours.
255. Standby pay shall not be allowed in the classes or positions whose duties are primarily administrative in nature, as designated by the Chief of the Department. Standby premiums shall not be included for purposes of retirement benefit calculations or contributions.

##### C. Call-Back Pay



**ARTICLE III - PAY, HOURS AND BENEFITS**

256. An employee who is called back to work following the completion of his/her work day and departure from his/her place of employment shall be granted a minimum of three (3) hours of pay at the applicable rate, or shall be paid for all hours actually worked at the applicable rate, whichever is greater. If an employee on standby is called back to work, call-back pay shall be paid in lieu of the standby premium.

**D. Court Appearance Pay and Administrative Hearings.**

257. a. Watch-Off Status. Employees appearing for court on watch-off days will receive three (3) hours of court appearance premium pay (50% above base salary) for their first court appearance commencing with the time indicated on the subpoena. This also includes court preparation and conferences when accompanied by a same day court appearance. No court appearance premium pay will be allowed for an employee's meal period.

258. Employees appearing in court for more than three (3) hours will receive court appearance pay on an hour-for-hour basis when appearing on scheduled watch-off days.

**b. Scheduled-to-Work Status.**

259. 1. Employees appearing for court less than one hour prior to the beginning of their scheduled watches will receive one (1) hour of court appearance premium pay.

260. 2. Employees appearing for court more than one (1) but less than two (2) hours prior to the beginning of their scheduled watches will receive two hours of court appearance premium pay.

261. 3. Employees appearing for court more than two (2) hours, but less than three (3) hours prior to the beginning of their scheduled watches will receive three (3) hours of court appearance premium pay.

262. 4. Employees who appear for court during the morning session and are scheduled to start work at 1200 hours will be entitled to a minimum of three (3) hours of court appearance premium pay regardless of the time indicated on the subpoena. No court appearance premium pay will be allowed for an employee's meal period.

263. 5. Employees appearing for court for more than three (3) hours will receive court appearance premium pay on an hour for hour basis when off-duty during the entire period. No court appearance premium pay will be allowed for an employee's meal period.

264. c. Court Standby. Employees placed on court standby without appearing in court will receive (2) hours of court appearance premium pay only if they are off-duty the entire call-in period indicated on the subpoena. On-duty time includes any overtime for purposes of this section.

265. Employees on sick leave with pay or disability leave who appear in court or are placed on standby are not entitled to additional compensation. Employees are paid as though they were working during these leave periods.

### **ARTICLE III - PAY, HOURS AND BENEFITS**

266. Employees on suspension who are subpoenaed and appear in court or are on standby are entitled to compensation at their regular rate of pay, not at the court appearance pay rate.
267. d. District Attorney Conferences. An employee attending an attorney's conference but not appearing in court will receive court appearance pay on an hour-for-hour basis.
268. e. Civil Court. Compensation requests for civil court appearances in which neither the City nor the Department is a party will be processed, reviewed, and certified by the Accounting Section of the Fiscal Division. These requests must be sent to the Accounting Section along with a copy of the subpoena and the record of Civil Court Appearance (SFPD 203) approved by the requesting employee's commanding officer. Employees will receive a court appearance pay on a half-hour for half-hour basis.
269. The Legal Division will review and approve overtime requests for civil cases in which the City or Department is a party. If approved, compensation shall be awarded on a half-hour for half-hour basis.
270. f. Administration Hearings. Any employee who, as part of his/her assigned duties, is required to appear at any administrative hearing while off duty shall receive court appearance pay for time actually spent, or shall receive two (2) hours of court appearance pay whichever is greater.
271. g. Employees on VA, who are required by subpoena to appear in court in a criminal case, will receive court appearance pay only when their appearance occurs on a date(s) for which the employee had a previously approved vacation request for 40 hours or more that predated the service of the subpoena. In all other cases, employees will be compensated only as provided by the current Department Bulletin on the subject of court compensation.
272. h. Any court appearance pay provided in this section shall not be included for purpose of retirement benefit calculations or contributions.

#### **Section 6. Uniform and Clothing Allowance.**

273. Employees shall receive, as part of their regular rate of pay, one thousand one hundred dollars (\$1,100) per year as an annual uniform allowance.
274. In exchange for this additional compensation, employees shall be responsible for the maintenance, care and replacement of the following standard uniform items: shirts, pants, shoes, BDUs and regular raingear.
275. Newly hired recruit officers shall not be entitled to the annual uniform allowance for the first year of service. Such recruit officers shall continue to be supplied with an initial set of uniforms.
276. Other safety equipment and uniform items, including specialized raingear and boots worn by the Mounted Unit, Solo Motorcycles and Park and Beach Unit, shall continue to be issued by the Department. Uniform items purchased by employees shall meet all specifications as provided by

### ARTICLE III - PAY, HOURS AND BENEFITS

the San Francisco Police Department. The specifications for uniform items to be purchased by employees follows as Appendix B.

277. Also in exchange for the annual uniform allowance, employees shall assume all costs of maintenance, repair and damage to the standard uniform items, including damage or repair to normal business attire worn by inspectors and other non-uniformed sworn employees. Employees shall be prohibited from filing personal property claims under General Order 3.15 for these items of clothing. The annual uniform allowance is provided specifically for employees to purchase the above listed standard uniform items. Employees shall, at all times, maintain a sufficient quantity and quality of uniform items to meet uniform and grooming standards at all times.
278. This provision will satisfy any and all obligations to provide employees with uniform clothing and maintenance.

#### Section 7. Health and Dental Coverage.

279. If fifty percent plus one (50%+1) of the employees covered under the Public Employee Committee of the San Francisco Labor Council (PEC) and the City agree to a change to their contribution model for employee dental premiums or health insurance premiums, with the change to be effective July 1, 2019, for calendar year 2020, then the City and the POA will reopen the MOU on dental or health insurance premium contributions only, with any resulting impasse being subject to interest arbitration under Charter section A8.590-5. The parties will complete reopener negotiations and impasse procedures, including, but not limited to, the 10-day period under Charter section A8.590-5(e), by no later than August 15, 2019.

##### A. Employee Health Coverage.

280. Except as provided below, the City shall contribute annually for employee health benefits, the contribution required under the Charter.
281. Except as provided below, in addition, the City shall contribute the full premium for the employee's own health care benefit coverage for "medically single" employees (i.e., employees not receiving a City contribution for dependent health care benefits).

##### B. Dependent Health Coverage.

282. Except as provided below, the City shall contribute the greater amount of \$225 per month or 75% of the dependent rate charged by the City to employees for Kaiser coverage at the dependent plus two or more level.

##### C. Health Coverage Effective January 1, 2015

283. 1. If, by July 1, 2014, the Public Employee Committee of the San Francisco Labor Council (PEC) and the City agree to a contribution model for employee health insurance premiums based on the City's contribution of a percentage of those premiums and the employee's payment of the balance (Percentage-Based Contribution Model), to be effective January 1,

### ARTICLE III - PAY, HOURS AND BENEFITS

2015 (for calendar year 2015 and thereafter), then effective January 1, 2015 the City shall contribute toward the health premiums for enrolled POA members the same percentage described in the PEC Percentage-Based Contribution Model, for the applicable health insurance plan, unless the City and the POA mutually agree to a different Percentage-Based Contribution Model. If the PEC and the City do not agree by July 1, 2014 to a new Percentage-Based Contribution Model to be effective January 1, 2015, then the City and the POA will reopen the MOU on health insurance premium contributions only, with any resulting impasse being subject to interest arbitration under Charter section A8.590-5. Reopener negotiations and impasse procedures, including, but not limited to, the 10-day period under Charter section A8.590-5(e), will be completed by no later than August 15, 2014.

284. 2. To ensure that all employees enrolled in health insurance through the City's Health Service System (HSS) are making premium contributions under a Percentage-Based Contribution Model and therefore have a stake in controlling the long term growth in health insurance costs, it is agreed that, to the extent the City's health insurance premium contribution under a Percentage-Based Contribution Model is less than the "average contribution" for the City's HSS members, as established under Charter section A8.428(b) (Average Contribution), then, in addition to the City's contribution, the employee's health insurance premium contribution shall be deemed to apply to the annual Average Contribution. The parties intend that the City's contribution toward premiums for members' health care should not exceed the amount established under Percentage-Based Contribution Model.
285. 3. Upon implementation of new contribution rates effective on January 1, 2015, Article III., section 8.C shall supersede Article III., sections 8.A and 8.B, and those sections will no longer be effective.
286. D. The aforesaid contributions shall be paid to the City Health Services System, not be considered as a part of an employee's salary for the purposes of computing straight time earnings, compensation for overtime worked, premium pay, retirement benefits, or retirement contributions; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.
- E. Dental Coverage.
287. The City shall continue to provide dental benefits at the existing level.
- 287a. Effective July 1, 2011, employees who enroll in the Delta Dental PPO Plan shall pay the following premiums for the respective coverage levels: \$5/month for employee-only, \$10/month for employee + 1 dependent, or \$15/month for employee + 2 or more dependents.
288. F. Employees shall be permitted to choose which available City plan they wish to participate in.
289. G. Benefits that are made available by the City to the domestic partners of other City employees shall simultaneously be made available to the domestic partners of members of the Department.
- H. Hepatitis B Vaccine.

**ARTICLE III - PAY, HOURS AND BENEFITS**

290. The City shall provide, at its cost, Hepatitis B vaccine immunization for employees whose health plans do not provide the benefit.

I. Annual Tuberculosis Screening.

291. The City will provide, at its cost, annual tuberculosis screening for employees.

J. Employee Assistance Program.

292. The City shall continue to provide the existing or equivalent employee assistance benefits presently provided by United Behavioral Health.

Section 8. Retirement.

A. Mandatory Employee Retirement Contribution.

293. For the duration of this Agreement, employees shall pay their own retirement contributions in accordance with the Charter. The parties acknowledge that said contributions satisfy the requirements of Charter Sections A8.595-11(d) and A8.597-11(d) for the duration of this Agreement.

294. Notwithstanding paragraph 293. above, the parties agree to further extend employee cost sharing by increasing the retirement contribution for all employees by three percent (3%) for the two-year period beginning July 1, 2011 and ending June 30, 2013. As of July 1, 2013, the parties agree to effectuate any applicable cost sharing provisions of a Charter amendment initiated by the Mayor, approved by the Board of Supervisors, and approved by the voters in the November 2011 election.

295. If the majority of City & County of San Francisco employees agree to an employee contribution to fund retiree health benefits, the parties agree to reopen the MOU on the subject of an employee contribution to fund retiree health benefits. This reopener is subject to the impasse resolution procedures as set forth in Charter Section A8.590-1 et seq.

296. B. Employees with twenty (20) years' service who leave the Department, but who retain their membership in the retirement system, shall be deemed to be retired for purposes of Penal Code Section 12027.

297. C. Rule changes by the City's Retirement Board regarding the crediting of accrued sick leave for retirement purposes shall be incorporated herein by reference. Any such rule changes, however, shall not be subject to the grievance and arbitration provisions of current Memorandum of Understanding or the impasse procedures of Charter Section A8.590-1, et. seq.

D. Pre-Retirement Planning Seminar and Retirement Ceremony.

298. The City shall continue to offer pre-retirement seminars and retirement ceremonies for bargaining unit members. These functions shall be administered by the Police Academy in

### ARTICLE III - PAY, HOURS AND BENEFITS

consultation with the Police Officers Association. Bargaining unit members shall be offered the opportunity to attend the seminar in order of the number of years of service credit they have earned towards retirement. A preference shall be given to those members who have filed for retirement with the Retirement System. The City's cost for such services shall not exceed \$15,000 per fiscal year.

#### **E. Retirement Restoration Payment**

**For employees who retire between December 26, 2020 and June 30, 2024, the City will provide restoration back pay for the following deferred wage and premium pay increases on regularly scheduled hours for the 12-month period that preceded the date of retirement:**

- **2% deferred from December 26, 2020 through the close of business June 30, 2022;**
- **1% deferred from the close of business June 30, 2021 through the close of business June 30, 2023; and**
- **Retention pay deferred from December 26, 2020 through the close of business June 30, 2022.**

**Restoration payments constitute pensionable compensation, to the maximum extent permissible under the Charter.**

**As an example, by way of illustration only, if an employee retires on June 30, 2021, the City would provide back pay to the employee for the period December 26, 2020 through June 30, 2021, in the amount of 2% on regularly scheduled hours. As another example, by way of illustration only, if an employee retires on June 30, 2022, the City would provide back pay to the employee for the period July 1, 2021 through June 30, 2022, in the amount of 1% and 2% on regularly scheduled hours.**

#### **Section 9. Wellness Programs.**

##### **A. Wellness Program.**

299. The City shall continue to provide a wellness program as follows:

300. 1. Employees must establish and maintain a core bank of sick leave hours in order to qualify for the wellness program. That core bank shall be a minimum of three hundred (300) hours.
301. 2. Once an employee has established their core bank of sick leave hours (as provided in (a) above) they shall be entitled to an annual conversion of sick leave hours for cash out payment under the above conditions. If an employee utilizes thirty (30) hours or less of sick leave in a fiscal year, they shall be entitled to cash out up to fifty (50) hours accrued during that fiscal year. If an employee utilized more than thirty (30) hours of sick leave in a fiscal year, they are not eligible for any sick leave

**ARTICLE III - PAY, HOURS AND BENEFITS**

cash out. Sick leave hours donated to catastrophic sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.

302. 3. Payment of the cash out shall take place on annual basis on the pay period closest to June 1 for each remaining fiscal year of this Agreement.
303. 4. The aforesaid payments shall not be considered as part of an employee's salary for the purpose of computing retirement benefits or retirement contributions.
304. 5. This program shall be suspended for Fiscal Years 2009-2010 and 2010-2011.

**B. Pilot "wellness incentive program" to promote workforce attendance:**

305. A full-time employee leaving the employment of the City upon service or disability retirement may receive payment of a portion of accrued sick leave credits at the time of separation. To be eligible, an employee must have utilized one hundred and sixty (160) hours or less of sick leave during the final two-year period prior to retirement. Sick leave hours donated to catastrophic sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.

306. The amount of this payment shall be equal to two percent (2%) of accrued sick leave credits at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave credits, as set forth under Civil Service Commission Rules, shall not be included in this computation and shall be compensated pursuant to those Rules.

307. Example of Calculation

Employee A retires with 20 years of service.  
Employee A has a sick leave balance of 500 hours.  
Employee A has a base salary rate of \$25.00 per hour at the time of separation.

Wellness Incentive = 2% for each year of service x 20 years of service = 40%  
40% x 500 hours = 200 hours.  
200 hours x \$25 (base salary at time of separation) = \$5,000

308. The number of hours for which an employee may receive cash payments shall not exceed one thousand forty (1040) hours, including any vested sick leave.
309. A wellness incentive bonus payment shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits or retirement contributions.
310. The beneficiaries of employees who are killed in the line of duty, whose names are engraved on the Memorial Wall of the SFPD Hall of Justice, shall receive payments provided by the wellness incentive program.

*ARTICLE III - PAY, HOURS AND BENEFITS*

311. The Pilot “wellness incentive program” to promote workforce attendance shall sunset on June 30, 2019.

Section 10. Paid Sick Leave Ordinance.

312. San Francisco Administrative Code, Chapter 12W Paid Sick Leave Ordinance is expressly waived in its entirety with respect to employees covered by this Agreement.

Section 11. Emergency Child Care Reimbursement Pilot Program

313. The Department will allocate up to fifty thousand dollars (\$50,000) annually for an Emergency Child Care Reimbursement fund. Under this policy, a child is defined as a natural or adopted child of the member under the age of 18. Employees who are held over for mandatory overtime, called back to work, or held over beyond their scheduled watch will be eligible to receive reimbursement up to twenty-five dollars (\$25) per each 30 minutes up to a maximum of one hundred dollars (\$100) per incident based on the employee’s certification verifying the dates, times, and expense incurred. Reimbursement shall not exceed six incidents per employee. This pilot program will sunset on June 30, 2021.

Section 12. Parental Release Time

314. An employee who is a parent of or has unpaid child rearing responsibility for one or more children attending K-12 school or a licensed child care facility shall be granted up to two (2) hours of paid Parental Release Time per six (6) month period (i.e. July 1 to December 31; January 1 to June 30) to participate in parent-teacher conferences.
315. In addition, employees are allowed up to forty (40) hours of unpaid Parental Release Time per fiscal year, not exceeding ten (10) hours in any calendar month, to participate in the K-12 school or licensed child care facility activities of any child of the employee or for whom the employee has unpaid child rearing responsibilities. Employees may use accrued vacation, compensatory time off, or floating holidays for this unpaid Parental Release Time.
316. Unused Parental Release Time hours do not roll over.
317. To qualify for either paid or unpaid Parental Release Time, the employee must follow the Department’s time off approval process and give reasonable notice to his/her immediate supervisor before taking the time off. The employee must provide written verification from the school or licensed child care facility that he/she participated in a parent teacher conference (for paid Parental Release Time) or school/child care related activities (for unpaid Parental Release Time) on a specific date and at a particular time, corresponding to the time off.
318. The Department may deny a request for Parental Release Time if the request is untimely or for operational needs. Request will not be unreasonably denied. Denials of requests for Parental Release Time under this section are not subject to the grievance procedure under this Agreement.



Section 13. Flexible Watch Assignment Committee

319. The City shall establish a Joint Labor-Management Committee to study a Flexible Watch Assignment Pilot Program. The Committee shall convene no later than November 1, 2018. The Committee shall discuss the possibility of establishing a Flexible Watch Pilot Program. The Committee shall be comprised of up to ten members: five Department representatives and five Association representatives. A Department representative and an Association representative shall jointly chair the Committee. The Committee shall conclude its research and issue a written report with recommendations on the feasibility of creating a Flexible Watch Assignment Program to the Chief of Police by May 30, 2019. The City will provide release time to the Association members to attend Committee meetings.

## ARTICLE IV. SCOPE

### Section 1. Severability.

320. Should any provision of this Memorandum or the application of such provision to any person or circumstances, be held invalid, the remainder of this Agreement or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

### Section 2. Duration.

321. This Agreement shall be effective upon ratification and shall be effective from July 1, 2018 through June 30, ~~2021~~2023.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this

\_\_\_\_\_ day of \_\_\_\_\_, 2018~~20~~20.

FOR THE CITY

FOR THE ASSOCIATION

\_\_\_\_\_  
Micki Callahan Date  
Director, Human Resources Department

\_\_\_\_\_  
Tony Montoya Date  
President, Police Officers' Association

\_\_\_\_\_  
Carol Isen Date  
Employee Relations Director

APPROVED AS TO FORM:  
Dennis Herrera, City Attorney

\_\_\_\_\_  
Katharine Hobin Porter Date  
Chief Labor Attorney

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

AND

SAN FRANCISCO POLICE OFFICERS' ASSOCIATION

UNITS P-1 AND P-2A

July 1, 2018 – June 30, 2023

**Revised per Amendment #1**

## **TABLE OF CONTENTS**

<b>ARTICLE I. REPRESENTATION.....</b>	<b>1</b>
Section 1. Recognition.....	1
Section 2. No Work Stoppages.....	1
Section 3. Management Authorities.....	2
Section 4. Negotiation Responsibility.....	2
Section 5. Grievance Procedure.....	3
Section 6. Release Time for POA Representatives.....	5
Section 7. Association.....	7
A. Payroll Deductions.....	7
B. Maintenance of Membership.....	7
C. Agency Fees.....	8
D. Indemnification.....	9
Section 8. Bulletin Boards and Distribution of Materials.....	9
Section 9. Lineups.....	9
<b>ARTICLE II. EMPLOYMENT CONDITIONS.....</b>	<b>10</b>
Section 1. Non-Discrimination.....	10
Section 2. Disabilities.....	10
Section 3. Personnel Files.....	11
Section 4. Rights of Individual Employees.....	12
Section 5. Access to Records of Department of Police Accountability.....	12
Section 6. Physical Fitness Program.....	13
Section 7. Temporary Modified Duty Assignments.....	13
Section 8. Seniority List.....	13
Section 9. Trading Privileges.....	13
Section 10. Watch Sign-Up.....	14
Section 11. Vacation Sign-Up.....	16
Section 12. Filling Vacancies.....	16
Section 13. Non-Emergency Special Event Assignments.....	16
Section 14. Meals and Breaks During Demonstrations.....	17
Section 15. Courtesy Parking System for Court Attendance.....	18
Section 16. District Station Parking.....	18
Section 17. Code Book.....	18
Section 18. Employee Training Reimbursement Program.....	18
Section 19. Canine Ownership.....	18
Section 20. Recruitment.....	19
A. Lateral Signing Bonus.....	19
B. Recruitment Committee.....	19
Section 21. Sergeants Rotation Pilot Program.....	19
Section 22. Health & Safety Committee.....	19
Section 23. Substance Abuse Testing.....	20
A. Mandatory Testing.....	20
B. Reasonable Suspicion.....	21
C. Employee Responsibilities.....	21
D. Management Responsibilities and Guidelines.....	22
<b>ARTICLE III. PAY, HOURS AND BENEFITS.....</b>	<b>23</b>

Section 1.	Wages.....	23
	A. General Wage Increases:.....	23
	B. Probationary Period and Step Advancement .....	24
	C. Lateral and Current Permanent City Employees Step Plan and Salary Adjustments .....	25
Section 2.	Overtime and Compensatory Time-Off. ....	25
	A. Overtime .....	25
	B. Compensatory Time-Off.....	27
Section 3.	Holidays. ....	28
Section 4.	Premiums. ....	29
	A. Acting Assignment Pay (Like Pay for Like Work) .....	29
	B. Field Training and Training Unit Coordinator Pay.....	30
	C. Bomb Squad/SWAT Team Pay .....	30
	D. Specialist Pay .....	31
	E. Motorcycle Pay .....	31
	F. Peace Officer Standards Training (POST) Certificate Pay .....	31
	G. Retention Pay .....	32
	H. Experienced Officer Incentive Pay .....	33
	I. Night Shift Differential .....	34
	J. Bilingual Pay.....	34
Section 5.	Other Pays. ....	34
	A. Canine Duty .....	34
	B. Standby Pay .....	35
	C. Call-Back Pay .....	35
	D. Court Appearance Pay and Administrative Hearings. ....	35
Section 6.	Uniform and Clothing Allowance.....	37
Section 7.	Health and Dental Coverage. ....	37
Section 8.	Retirement. ....	39
Section 9.	Wellness Programs.....	41
Section 10.	Paid Sick Leave Ordinance.....	42
Section 11.	Emergency Child Care Reimbursement Pilot Program .....	42
Section 12.	Parental Release Time.....	43
Section 13.	Flexible Watch Assignment Committee .....	43
<b>ARTICLE IV. SCOPE.....</b>		<b>44</b>
Section 1.	Severability. ....	44
Section 2.	Duration. ....	44

## DEFINITIONS

City	The City and County of San Francisco.
Association	The San Francisco Police Officers' Association.
Commission	The Police Commission of the City and County of San Francisco.
Day	Calendar day, unless otherwise specified.
Department	The San Francisco Police Department.
Charter	The Charter of the City and County of San Francisco.
Immediate Supervisor	The individual who immediately assigns, reviews, or directs the work of an employee.
Intermediate Supervisor	The next higher supervisor based on the organization pattern of the Department.
Employee	A full time peace officer within each classification listed in paragraph 1 herein, and used interchangeably with the word "officer."
Memorandum	This Memorandum of Understanding.
Watch	The period of time an employee is scheduled to be on duty.
Working Conditions	Wages, hours, benefits and other terms and conditions of employment, i.e., those matters within the scope of representation under the Meyers-Milias-Brown Act.

The parties recognize that recodifications may have rendered the references to specific Civil Service Rules and Charter sections contained herein, incorrect. Therefore, the parties agree that such terms will read as if they accurately referenced the same sections in their codified form as of July 1, 2007.

## PREAMBLE

This Memorandum of Understanding (hereinafter "MOU") constitutes a mutual agreement between the San Francisco Police Officers' Association (hereinafter referred to as the "Association") and the City and County of San Francisco (hereinafter referred to as the "City"), through the Office of the Mayor acting on behalf of the City and County of San Francisco, arrived at through good faith meeting and conferring pursuant to the Meyers-Milias-Brown Act and Charter Section A8.590-1, et. seq.

## ARTICLE I. REPRESENTATION

### Section 1. Recognition.

1. Pursuant to Government Code Section 3500, et. seq., the City recognizes the Association as the majority bargaining agent for sworn personnel of the San Francisco Police Department in the following bargaining units and classifications:

#### P-1 Police Rank and File

- Q-2 Police Officer
- Q-3 Police Officer II
- Q-4 Police Officer III
- Q-35 Assistant Inspector
- Q-36 Assistant Inspector II
- Q-37 Assistant Inspector III
- Q-50 Sergeant
- Q-51 Sergeant II
- Q-52 Sergeant III
- 0380 Inspector
- 0381 Inspector II
- 0382 Inspector III
- 0385 Crime Scene Investigations Manager
- 0386 Crime Scene Investigations Manager 2
- 0387 Crime Scene Investigations Manager 3

#### P-2A Police Supervisory

- Q-60 Lieutenant
- Q-61 Lieutenant II
- Q-62 Lieutenant III
- Q-80 Captain
- Q-81 Captain II
- Q-82 Captain III

2. The City's Employee Relations Director agrees not to implement under Administrative Code Section 16.210 any bargaining unit reassignment of the above listed classifications during the term of this Agreement.

### Section 2. No Work Stoppages.

3. During the time this MOU is in force and effect, the Association and each member of its bargaining unit covenant and agree that she/he/it will not authorize, engage or participate in any strike, work slowdown or any form of work stoppage including but not limited to absenteeism, observing picket lines or any other form of sympathy strike.



## ARTICLE I – REPRESENTATION

### Section 3. Management Authorities.

4. The City shall have authority for the policies and administration of the Department and the power to organize, reorganize and manage the Police Department and its employees. Nothing in this document shall be interpreted as abrogating the Charter in any of its parts. Said authority shall include, but not be limited to, work rules and regulations. This paragraph is not to be interpreted as a limitation on the rights of the Association under the Meyers-Milias-Brown Act.

### Section 4. Negotiation Responsibility.

5. A. Except in cases of emergency, the City/Department shall give reasonable written notice to the Association of any proposed change in general orders or other matters within the scope of representation as specified in Government Code Section 3504.5. The Association shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
6. In cases of emergency when the City/Department determines that a proposed change as described herein must be adopted immediately without prior notice or meetings with the Association, the City/Department shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
7. B. If the Association does not respond within thirty (30) calendar days from the date of receipt of written notification of a proposed change as described in subsection A. hereof, the Association shall be deemed to have waived its opportunity to meet and confer on the proposed change.
8. C. If the Association timely requests the opportunity to meet and confer as provided herein, the City/Department, with the direct assistance and participation of the Employee Relations Division, agrees to meet and confer with the Association over such proposed change or changes, within thirty (30) calendar days of such timely request, unless a longer period of time is mutually agreed upon, in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on the proposed change or changes.
9. D. If no agreement is reached, the matter shall, at the request of either party, be resolved pursuant to the impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7. Staffing matters, except for current safety practices pertaining to two-officer vehicles, shall be excluded from the impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7.
10. E. This Memorandum sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Memoranda of Understanding, Understandings, or Agreements, whether formal or informal, are hereby superseded or terminated in their entirety. This Memorandum may be modified, but only in writing, upon the mutual consent of the parties and ratification by the Board of Supervisors.

## **ARTICLE I – REPRESENTATION**

### **Section 5. Grievance Procedure.**

11. The City and the Association recognize that early settlement of grievances is essential to sound employee-employer relations. The parties seek to establish a mutually satisfactory method for the settlement of grievances, as provided for below. In presenting a grievance, the aggrieved and/or his or her representative is assured freedom from restraint, interference, coercion, discrimination or reprisal.

#### **Definition**

12. A grievance is defined as any dispute that involves the interpretation or application of a specific provision of this Agreement, or relating to General Orders 3.08, 3.15, 11.01, 11.03, 11.05, 11.06 and 11.10.

#### **Grievance Description**

13. A grievance must include the following:
- a. The basis and date of the grievance as known at the time of submission;
  - b. The section(s) of the Agreement allegedly violated;
  - c. The remedy or solution sought.
14. If the grievance does not contain the information described in (a) – (c), the City may request such information, at any step in the process, and defer processing until the information is provided. If the information is not provided within 30 days of request, the grievance, or that portion of it as to which the requested information is not supplied, is deemed withdrawn.

#### **Time Limits**

15. The parties have agreed upon this grievance procedure in order to ensure the swift resolution of all grievances. The parties must follow each step within the applicable timelines. No steps of the grievance procedure may be skipped without mutual agreement.
16. For purposes of this grievance procedure, a business day is Monday through Friday, 8am to 5pm, excluding legal holidays.
17. Grievances shall be settled in conformity with the following procedure. Except, however, actions taken by the City that are necessary to ensure compliance with federal, state or local laws, ordinances or regulations shall not be grievable hereunder. After notice of such intended action by the City, the Association may however, offer in writing its view on compliance and possible alternative solutions, within ten (10) business days to the Chief of Police who shall respond in writing to the Association within ten (10) business days. The arbitrability of all grievances shall be determined by a court of competent jurisdiction.

#### **Informal Discussion with Immediate Supervisor**

## **ARTICLE I – REPRESENTATION**

18. An employee with a grievance may first discuss it with his or her immediate supervisor, or the next level in management, to try to work out a satisfactory solution in an informal manner.

### **Step I**

19. If the employee does not obtain a solution to the grievance by informal discussion, the employee or the Association shall submit the grievance in writing to his or her commanding officer ten (10) business days of the facts or event giving rise to the grievance
20. After review and discussion, the commanding officer shall notify the grievant(s) and the Association representative, if any, within seven (7) business days of receipt of the grievance, in writing, of the decision and the reasons.

### **Step II**

21. If the grievance is not resolved in Step I, the Association shall submit the grievance to the Chief of Police within seven (7) business days after receipt of the commanding officer's decision stating the reasons why the Step I answer is not satisfactory.
22. The Chief, or designee, will review the material submitted and shall hold a meeting on the grievance at the request of the Association on behalf of the grievant, unless the Chief is not empowered to act. The Chief shall respond in writing and render a decision to the grievant, and the Association, within ten (10) business days.

### **Step III**

23. If the grievance is not resolved at Step II, the Association has the right to appeal the decision of the Chief of Police to the Employee Relations Director within ten (10) business days after the date of the Chief's response. The Association shall state the reason why the Step II response is not satisfactory.
24. The Employee Relations Director shall have ten (10) business days to issue a written response. In lieu of a response, the Employee Relations Director may request a meeting to seek to resolve the grievance. If any such meeting is unsuccessful to resolve the grievance, the Employee Relations Director shall issue a written response within fifteen (15) business days of the meeting.
25. If the Employee Relations Director is unable to resolve the grievance to the mutual satisfaction of the parties in the time prescribed, the Association may submit the grievance to arbitration within fifteen (15) business days of receipt of the Step III response. Only the Association may submit a grievance to arbitration. The Employee Relations Director shall acknowledge receipt of the Association's letter moving the grievance to arbitration.
26. The arbitrator shall be an impartial person selected by mutual consent of the parties or by the parties alternately striking arbitrators from the standing panel. The first party to strike will be determined by lot, coin flip or other comparable method.

### **Arbitrator Panel**

## **ARTICLE I – REPRESENTATION**

27. By September 1, 2018, the City and the Association shall select a standing panel of arbitrators to hear grievances. The parties shall establish the panel in the following fashion: by not later than July 20, 2018, each party shall submit to the other, the names of seven (7) arbitrators and prepare a list with all arbitrators submitted by the parties. The parties shall then, beginning by lot, alternately strike names from the list until seven (7) names remain. The seven (7) remaining persons shall constitute the standing arbitration panel for the term of the Agreement.
28. The decision of the Arbitrator shall be final and binding upon the parties. The Arbitrator shall not have the right to alter, amend, delete or add to any of the terms of this Agreement.
29. Notwithstanding any other provisions of this MOU, disciplinary or punitive actions described in Charter Section A8.343 cannot be grieved or arbitrated. An arbitrator selected pursuant hereto shall have no authority to hear or decide any such disciplinary or punitive actions.
30. An Arbitrator selected pursuant to this Agreement shall have no power or authority to alter or supersede the Charter, the Civil Service Commission rules, or the Administrative Code.
31. The parties shall share the jointly-incurred costs of the arbitration proceedings. Each party shall in good faith divulge to the other party all available material facts at the time said party acquires knowledge thereof concerning the matter in dispute.
32. Nothing herein shall restrict the right of the City or the Department to initiate grievances under this Agreement. In such instance, the City or the Department shall file the grievance with the Association. The Association shall have ten (10) business days to issue a written response. If the grievance is not resolved, the City or the Department may submit the grievance to arbitration within fifteen (15) business days of receipt of the Association's response.

### **A. Expedited Arbitration**

33. Notwithstanding the above provisions, the parties may by mutual agreement agree to submit a particular grievance to expedited arbitration. Expedited arbitration may include, by the agreement of the parties:
  1. time-limited argument;
  2. waiver of court reporter and/or transcript;
  3. closing arguments in lieu of briefs;
  4. bench decision by the arbitrator; and
  5. such other expedited procedures as the parties deem advisable for the case at hand.

### **Section 6. Release Time for POA Representatives.**

34. An employee may designate a representative of his/her choice to represent him/her in grievance meetings or investigative interviews mutually scheduled with Department management and in scheduled appeals hearings. Where a formal written statement of charges has been filed against the employee or where the employee is subjected to an interrogation focusing on matters that are likely

## **ARTICLE I – REPRESENTATION**

to result in punitive action, the employee may choose any representative not subject to the same investigation. In all other matters, if an employee chooses a sworn employee as his/her representative, that employee must be below the rank of Commander. The sworn employee representative shall serve without loss of pay or benefits to the extent such representation occurs on regular scheduled time, and provided such use of on-duty time is reasonable.

35. A reasonable number of Association representatives may participate with management in mutually scheduled employer-employee relations meetings on their regularly scheduled duty time without loss of pay or benefits. One Association representative other than the President may be released from duty as necessary to attend public meetings of the Police Commission. This representative shall not appear before the Commission in uniform. This release from duty is subject to the operational needs of the department.
36. The City agrees to provide the POA President with eighty (80) hours of release time each pay period. Sixty (60) of these release time hours each pay period will be on City time. The POA will reimburse the Department for the remaining twenty (20) hours each pay period.
37. The POA agrees that the start of the term of office for a newly-elected POA President will coincide with the start of a City pay period. The President's pay rate shall include POST pay and any retention pay for which he/she is eligible. The President shall not be eligible for other pay premiums, other special pays, overtime assignments, or "10B" assignments during the period of release time. The POA President will be considered to be on a standard five (5) day workweek during such release time.
38. While on release time, the President will utilize accrued leave, as appropriate, for any absences. The use of such leave time will be reported to the Departmental Human Resources Officer for accounting purposes.
39. During the sixty (60) hours each pay period of City-paid release time, the POA President shall engage only in the following activities:
  40. 1. preparing for and participating in meet and confer or consultation with representatives of the City or Police Department on matters relating to employment conditions and employee relations, including wages, hours and other terms and conditions of employment; and
  41. 2. investigating or processing grievances or appeals.
42. The POA President shall not participate in any other activities, including but not limited to political activities, during this City-paid release time. The POA President shall provide documentation to the Chief certifying that during each pay period, the POA President used the sixty (60) hours of City-paid release time only for authorized purposes. The POA President shall provide this certification at the conclusion of each pay period.
43. The POA agrees to reimburse the City for the balance of the release time, which is twenty (20) hours of release time each pay period. The amount reimbursed to the City shall be 1.35 times the base hourly rate of pay for the permanent rank held by the POA President. The POA shall submit the required payment to the Police Department within 11 days after the close of each pay period.

## ARTICLE I – REPRESENTATION

44. It is understood and agreed that during all release time hours, including those for which the City is reimbursed by the POA, the President is required to comply with all applicable departmental and City rules and policies for active duty officers, including attendance at training, maintenance of certifications, and compliance with the substance abuse policy and any applicable departmental Statement of Incompatible Activities. The President will sign a statement to that effect at the commencement of the initial period of release time.
45. As a precondition to providing this release time, the POA agrees to execute an agreement, in a form acceptable to the City Attorney, that indemnifies and holds the City harmless from any legal claims by any party as to the conduct of the President during any period of release time. This agreement will be executed prior to the start of the release time.
46. The parties acknowledge that qualified POA officials utilizing unpaid union leave may be entitled to receive service credit consistent with Charter Section A8.519.

### Section 7. Association.

#### A. Payroll Deductions

47. The Association shall provide the Employee Relations Director and the City Controller with a complete list of the City classifications subject to this section represented by the Association, a statement of the membership dues for employees in each classification, and a list of employees in said classification who have signed authorizations for payroll dues deductions. Such list of represented classifications and statement of membership dues shall be amended as necessary. The Controller may take up to thirty (30) days to implement such changes. The Controller shall make required membership dues payroll deductions for the Association as designated from the list submitted by the Association. The Association shall pay the reasonable costs of this service. Such costs shall be established by the Controller of the City and County of San Francisco.
48. Effective the first complete pay period commencing after the receipt of dues authorization deduction forms by the Controller and each pay period thereafter, the Controller shall make membership dues deductions, as appropriate, from the regular periodic payroll warrant of each POA member described above.

#### B. Maintenance of Membership

49. Employees covered by this MOU who have voluntarily joined the Association, and have authorized payroll deduction of dues, initiation fees, premiums for insurance programs and political action fund contributions, shall, for the administrative convenience of the parties, be permitted to revoke authorization for the deduction of Association dues only during the month of May for any year. Any request for such revocation shall be delivered in person to the Office of the Controller or may be sent by U.S. mail to the Controller, whose current address is 875 Stevenson Street, San Francisco, CA 94103. The City shall deliver a copy of any revocation notice to the Association not later than July 1.

**ARTICLE I – REPRESENTATION**

**C. Agency Fees**

50. 1. Application. The provisions of this section shall apply to all police officers of bargaining unit P-1.
51. 2. Implementation. An agency fee shall be implemented within representation units or subunits when:
- a. Election
52. The Union has requested, in writing, an election on the issue, to be conducted by the State Conciliation Service and 50% plus one of those voting favor implementation of an agency shop, or
- b. 2/3 Membership
53. The Union makes a showing that 2/3 of the employees within the unit or subunit are dues-paying members of the Union, or
- c. New Employees
54. The Union requests, in writing, an agency fee be implemented for all employees hired after a date to be agreed to by the Union and the Employee Relations Division.
55. 3. Service Fee. All police officers of bargaining unit P-1 except as set forth below, shall, as a condition of continued employment, become and remain a member of the Association, or in lieu thereof, shall pay a service fee to the Association. The fair share service fee payment shall be established annually by the Association, provided that such fair share agency service fee will be used by the Association only for the purposes permitted by law. The Association shall give all non-member employees of affected bargaining units written notice of their obligation to either join or pay an agency fee as a condition of employment. After such notice and a time period agreed to by the parties, service fees from non-members shall be collected by payroll deduction pursuant to Administrative Code Section 16.90. Failure to comply with this section shall be grounds for termination. The Association, at its option, may elect to waive its rights to demand termination and instead utilize judicial process to compel payment.
56. 4. Financial Reporting. Annually, the Association will provide an explanation of the fee and sufficient financial information to enable the fair share service fee payer to gauge the appropriateness of the fee. The Association will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, not chosen by the Association, and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.
57. 5. Religious Exemption. Any employee covered by this provision who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National

## ARTICLE I – REPRESENTATION

Labor Relations Board to hold such objections to labor union membership shall, upon presentation of membership and historical objection, be relieved of any obligation to pay the required service fee. The Association shall be informed in writing of any such requests.

58. 6. Payment of Sums Withheld. Nine (9) working days following payday, the City will promptly pay over to the Association, less the fee for making such deductions, all sums withheld for membership or service fees. The City shall also provide with each payment a list of employees paying such service fees.
59. 7. The Union shall comply with the requirements set forth in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) for the deduction of agency fees. Annually, the Union shall certify in writing to the City that the content of the written notice meets the requirements set forth in this section and in Hudson.
60. 8. The provisions above pertaining to agency fee shall be eliminated if and when the United States Supreme Court issues a decision invalidating any right to collect agency fees from public employees.

### D. Indemnification

61. The Association agrees to indemnify and hold the City harmless for any loss or damage arising from the operation of this section.

### Section 8. Bulletin Boards and Distribution of Materials.

62. The Department shall reserve a reasonable amount of space on bulletin boards within police buildings for the distribution of Association literature. All posted literature shall be dated, identified by affiliation and author, and neatly displayed, and removed from the bulletin board by the Association when no longer timely. Except as stated below, the Department agrees that identifiable Association literature shall not be removed from said bulletin boards without first consulting with the station, bureau, or unit representative of the Association to determine if the literature should remain for an additional period of time. The Association shall not post literature that is discriminatory, harassing, or violates City policy or the law. The Department may remove this type of literature immediately and shall notify the Association of its removal.
63. Distribution of Association literature by any Association member shall be done so as not to interfere with or interrupt the performance of official police duties.

### Section 9. Lineups.

64. The Association's access to its members following lineups is governed by Appendix A.



## ARTICLE II. EMPLOYMENT CONDITIONS

### Section 1. Non-Discrimination.

65. The City and the Association agree that discriminating against or harassing employees, applicants, or persons providing services to the City by contract, including sworn and non-sworn employees, because of their actual or perceived race, color, creed, religion, sex/gender, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, age, political affiliation or opinion, gender identity, gender expression, sexual orientation, military or veteran status, or other protected category under the law, is prohibited. This paragraph shall not be construed to restrict or proscribe any rule, policy, procedure, order, action, determination or practice taken to ensure compliance with applicable law.
66. This section is not intended to affect the right of an employee to elect any applicable administrative remedy for discrimination proscribed herein. In the event that more than one administrative remedy is offered by the City and County of San Francisco, the Association and the employee shall elect only one. That election is irrevocable. It is understood that this paragraph shall not foreclose the election by an affected employee of any administrative or statutory remedy provided by law.
67. The parties recognize that in a disciplinary proceeding, or any other context in which EEO issues are administratively determined by the City or the Police Department, the City does not represent individual police officers. Accordingly, the parties recognize the Association has a duty to fairly represent all of its members and that this duty applies to POA members who are complainants in discrimination cases, as well as to POA members who may be accused of discriminatory conduct.
68. Neither the City nor the Association shall interfere with, intimidate, restrain, coerce or discriminate against any employee because of the exercise of rights granted pursuant to the Meyers-Milias-Brown Act.
69. It is understood and agreed that any disciplinary action against an employee that may be initiated or result from the application or interpretation of these provisions shall not be subject to the grievance and arbitration provisions of Article I, Section 5 of this Agreement. Any action grieved pursuant to this section and determined to be violative thereof may be set aside by the Chief of the Department or the Police Commission.
70. Paragraphs 65-69 shall be non-grievable except with respect to an asserted violation of paragraph 68.

### Section 2. Disabilities.

71. The parties agree that they are required to provide reasonable accommodations for persons with disabilities in order to comply with the provisions of the Americans With Disabilities Act ("ADA"), the Fair Employment and Housing Act ("FEHA") and all other applicable federal, state and local disability anti-discrimination statutes and further agree that this Memorandum will not be

## ARTICLE II - EMPLOYMENT CONDITIONS

interpreted, administered or applied in any manner which is inconsistent with said statutes. The City reserves the right to take any action necessary to comply therewith.

### Section 3. Personnel Files.

72. The City shall maintain personnel files for each employee. Employees or their authorized representatives have the right to examine the contents of their master personnel files maintained by the Personnel Division during business hours Monday through Friday excluding legal holidays. Adverse comments may not be placed in the employees' master personnel files without the employees' having acknowledged notice of the adverse comments on the face of the document prior to placement of the comments in the files. Employees may cause to be placed in their master personnel files responses to adverse material inserted therein and a reasonable amount of correspondence as determined by the Chief originating from other sources directly related to their job performance may be placed in employees' master personnel files.
73. Only persons authorized by the Commanding Officer of the Personnel Division may review an employee's master personnel file.
74. This section regarding employee access and authorized review applies to materials contained in files of cases classified as improper conduct in the Management Control Division and EEO Unit after the Chief determines to proceed with disciplinary action. All other access to the files at the Management Control Division and EEO Unit must be pursuant to a valid discovery motion filed and approved by the Police Commission or a court of competent jurisdiction except as provided in subsection D. below regarding sealed reprimands except where access is deemed by the City to pertain to investigations, EEO compliance, Consent Decrees or other legal or administrative proceedings.
75. Formal reprimands without further penalty will not be considered for purposes of promotion, transfer or special assignments after the formal reprimand has been in the employee's personnel file for two (2) years or after the earlier of the two time periods listed below have elapsed:
  76. 1. not later than three (3) years from the date the complaint against the officer is filed, absent requests for hearing, appeals, delays requested by the employee or the Union, and the tolling of time periods under Public Safety Officers Procedural Bill of Rights Act (POBR); or
  77. 2. not later than two (2) years from the notice of the intent to reprimand, absent requests for hearing, appeals, delays requested by the employee or the Union, and the tolling of time periods under POBR.
78. Formal reprimands with additional penalty more than five (5) years old will not be considered for purposes of promotion, transfer or special assignments.
79. All officers shall have the right to review their master personnel file and identify all such documents. Upon concurrence of the Commanding Officer of Personnel that such documents have been appropriately identified, they will be placed in an envelope, sealed and initialed by the officer. The envelope will be placed in the officer's personnel file and will be opened only in the event that

## **ARTICLE II - EMPLOYMENT CONDITIONS**

the officer is in the future subject to discipline or access is deemed by the City to pertain to investigations, EEO compliance, Consent Decrees or other legal or administrative proceedings.

### **Section 4. Rights of Individual Employees.**

80. An employee may not be disciplined or subjected to punitive action without written notice of the disciplinary action. The employee is entitled to receive a copy of the charges and material upon which the disciplinary action is based. This provision shall not be subject to the grievance and arbitration procedure set forth in this Agreement.
81. The City agrees to use the principle of progressive discipline in the application of punitive action where appropriate. The City is not precluded from imposing suspension and/or termination if the facts so indicate without first imposing lesser forms of punitive action. This provision shall not be subject to the grievance and arbitration procedure set forth in this Agreement.
82. The Department shall not subject an employee to examination by the Police Physician without informing the employee of the underlying reasons for the examination. An employee may seek an opinion of another physician of his/her choice and at his/her own expense and submit this supplemental report to the Police Physician. The Police Physician must consider the supplemental information in making a recommendation to the Chief of Police. The employee is entitled to receive a copy of the Police Physician's final recommendation. The Chief of Police will make the final decision as to the recommendation filed by the Police Physician.

### **Section 5. Access to Records of Department of Police Accountability**

83. It is agreed that a complainant's Department of Police Accountability (DPA) complaint form shall be released to the complainant upon request.
84. Notwithstanding any other provision of this Memorandum of Understanding, in the event a DPA investigative hearing is determined to be appropriate and is scheduled, the affected employee and the complainant, prior to said hearing and upon seventy-two (72) hours' advance notice, shall have access to all evidence not deemed to be confidential pursuant to the Police Commission rules. Such access shall consist of inspection of materials and, upon request, copies of materials for use by the employee and the complainant.
85. Review and receipt of evidence shall be permitted only upon the execution by the requesting party and his or her representative of a confidentiality statement approved by the Police Commission. The Police Commission shall monitor the application of this paragraph and shall implement policies and procedures designed to ensure compliance herewith.
86. Summary disposition reports, the format of which shall be set by the Police Commission and which shall include a brief description of the complaint and summary findings of fact, shall be prepared by the DPA in matters that are not sustained, as well as in those matters which are disposed of by the Chief of Police and do not result in a Police Commission hearing. These reports shall be available for public review and disclosure. Such reports shall not contain the name(s) of the complainant(s)

## **ARTICLE II - EMPLOYMENT CONDITIONS**

nor of the charged officer(s) nor contain any information which would (a) deprive a person of the right to a fair trial or an impartial adjudication; (b) disclose investigative techniques and procedures deemed confidential by the Police Commission; (c) disclose confidential information when disclosure is prohibited by any law; (d) endanger the life or physical safety of any person, including but not limited to, law enforcement personnel; or (e) result in an unnecessary invasion of the personal privacy of an individual.

87. The DPA, in conjunction with the Police Commission, shall develop procedures which may utilize face-to-face dispute resolution in appropriate cases. Use of these procedures will be voluntary and subject to the veto power of the DPA for the complainant or the affected employee.
88. Disputes regarding this section shall be resolved by utilization of existing rules and regulations and shall not be subject to the grievance and arbitration procedure contained in this Memorandum of Understanding.

### **Section 6. Physical Fitness Program.**

89. The physical fitness program as set forth in General Order 11.10 and as outlined in the Physical Fitness Program Information Booklet (revised July, 1993) shall remain in effect, and shall be available to all employees covered under this MOU.

### **Section 7. Temporary Modified Duty Assignments.**

90. Temporary modified duty assignments shall be administered in accordance with General Order 11.12. The parties agree that, except for matters related to compensation while engaged in temporary modified duty assignments, decisions made pursuant to General Order 11.12 shall not be grievable under the parties' MOU.

### **Section 8. Seniority List.**

91. The Department of Human Resources will generate a master seniority list by Civil Service rank and provide it to the Association by January 1<sup>st</sup> of each year. The Association shall submit objections or requests for adjustments to the seniority list to the Department of Human Resources within ten (10) business days of receipt of the master seniority list.
92. The Department of Human Resources shall consider any objections or requests on their merits and take any appropriate action. An employee's failure to challenge the accuracy of the master seniority list in January does not preclude the employee from making such a challenge at the time the list is being applied to the watch sign-up.

### **Section 9. Trading Privileges.**

## ARTICLE II - EMPLOYMENT CONDITIONS

93. An employee may trade his or her tour of duty with another employee of the same rank within his/her unit with the approval of his/her Commanding Officer, provided said trade results in no net increase in cost to the City and further provided that employees shall not exceed one trade for every two pay periods. Such trades shall be paid back within 90 days.

### Section 10. Watch Sign-Up.

94. A. Employees assigned to a station or unit shall be assigned to watches according to a semi annual seniority sign-up.
- B. Rules of the Sign-Ups.
95. Each unit/station will conduct two (2) seniority sign-ups per year as follows:
96. 1. The Chief of Police, or designee, will determine the size of each watch in advance of the sign-up.
97. 2. Employees will sign up for their choice of watch in order of seniority. The Commanding Officer, or designee, shall determine assignments.
98. 3. The results of the Sign-Up will take effect on the first day of the first pay period in the months of March and September of each year of this MOU.
99. 4. The Sign-Up period will commence thirty (30) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
100. 5. The Sign-Up period will close no sooner than seven (7) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
101. 6. Each unit/station will publish and post the final results of the Sign-Up no later than five (5) calendar days prior to the first day of the first pay period in the months of March and September of each year of this MOU.
- C. Transfers Between Stations.
102. If an employee is transferred from one station to another by Department action, the employee's current watch choice continues until the next station sign-up.
103. If an employee transfers to another station at his/her own request, he/she forfeits his/her right to a particular watch, and may have to wait for the next station sign-up. If more than one employee transfers to the same station, seniority shall apply to watch assignments for the interim period.

## ARTICLE II - EMPLOYMENT CONDITIONS

- D. Applicability of the Watch Sign-Ups.
104. 1. The seniority watch sign-up process will apply to assignments and watches as determined by the Chief of Police, or designee.
105. 2. Employees who are reassigned to another watch as a result of the semiannual seniority watch sign-up shall be entitled to their original vacation selection based on prior sign-up.
106. E. The District Station Commanding Officers, with the approval of their Deputy Chief, shall have the authority to assign up to fifteen percent (15%) of sworn personnel under their command to meet operational needs, without regard to seniority at each station including the Airport Patrol Division, for purposes of filling specialized and staff positions (i.e., permit investigation officer, plain-clothes cars, special duty or community relations officer) but not limited to them, when it is necessary to have an individual assigned to a special unit which requires experience or other articulable qualifications possessed by the employee to be assigned, and which experience or qualifications would not be attained by filling the assignment by seniority.
107. F. The District Commanding Officer may assign employees with the lowest qualifying seniority to another watch for the following reasons:
108. 1. Agreement of officer after conducting a canvass of employees of the station or unit.
109. 2. Need for non-probationary officers to work with probationary officers in order to field the platoon.
110. 3. At the request of an employee impacted by unforeseen conditions requiring a change in his/her watch occurring after one of the two watch sign-ups per year, the Commanding Officer may reassign the employee to another watch based on the needs of the Department.
111. G. For shift bidding and vacation bidding Departmental seniority will be utilized. Departmental seniority is the employee's original start date (i.e., beginning of employment with the Department or date of promotion to new rank).
- H. Solo Motorcycle Officers.
112. The following shall apply to Solo Motorcycle Officers in the ranks of "Police Officer."
113. 1. There shall be one Department-wide transfer list for Co. K Solos and the Airport Bureau Solos.
114. 2. For purpose of the seniority sign-ups, Solo Motorcycle Officers in Co. K and at the Airport Bureau will be treated as one unit.
115. 3. Any Solo Motorcycle Officer vacancies in either Co. K or the Airport Bureau will be offered to the next officer on the P-2 list. Any officer filling a vacancy from the P-2 list shall remain in that assignment until the next seniority sign-up, when he/she shall

## ARTICLE II - EMPLOYMENT CONDITIONS

participate in the seniority sign-up process. At that time any such officer may exercise his or her unit seniority to fill any vacancy in either unit.

116. 4. Employees shall not be on the Solo Motorcycle transfer list while currently assigned to a Solo Motorcycle Unit.
117. I. Watch sign-ups are not final until five (5) calendar days prior to adoption.

### Section 11. Vacation Sign-Up.

118. When using discretionary time-off, employees shall use accrued EH (Equivalent Holiday), FH (Floating Holiday), and/or PE (Physical Fitness Time) prior to using accrued VA (Vacation) and/or OU (Overtime Use). Employees who have reached maximum vacation time accrual limits are exempted from the application of this section.
119. Employees at each station or unit shall, by watch, sign up by seniority for vacation on an annual basis prior to the first full pay period in March of each year but in all cases after the first watch sign-up in any calendar year. After the date of this vacation sign-up, no employee's scheduled vacation may be displaced by a subsequent request by a more senior employee. An appropriate and sufficient number of vacation slots shall be made available so that all employees on a given watch may exercise their vacation rights.
120. Additionally, time shall be provided on such vacation sign-up to allow employees, by reverse seniority, to sign up for one week of compensatory time-off.
121. If an employee is transferred from one station or unit to another by Department action, his or her vacation choice shall continue. If an employee transfers to another station or unit by his or her request, the employee's choice of vacation may be forfeited based on staffing needs at the new assignment.

### Section 12. Filling Vacancies.

122. When a vacancy occurs in a promotional rank, an eligible list exists for that rank, a position exists in the budget for the promotion and an appointment is made, the promotional appointment shall be made immediately on a permanent basis. Upon request, the City will provide the POA with the number of all available, authorized, budgeted positions for each promotive rank (i.e., sergeant, lieutenant, and captain) covered by this Agreement.

### Section 13. Non-Emergency Special Event Assignments.

123. This Department is frequently called upon to provide police services for one-time special events such as, but not limited to, parades, marathons, community festivals, and bicycle races. These events take place on City streets and usually require large numbers of police officers.

## **ARTICLE II - EMPLOYMENT CONDITIONS**

124. In order to minimize the impact on the Department's ability to provide police services at the district stations, it is necessary to utilize off-duty personnel to augment the normal complement of officers assigned for duty on the day of the event.
125. The Department shall determine the number of officers that are needed to police the special event and utilize the following:
  1. On-duty personnel working their regular watch who can be spared from normal police duties within the district.
  2. Officers Working EWW. This group will include officers working beyond their normal tour of duty and officers working their normal watch off.
128. An employee's regular watch shall not be changed more than three (3) hours to avoid the payment of overtime in the policing of an event of this sort except that management may adjust regular watches up to seven (7) hours for July 4<sup>th</sup>, October 31<sup>st</sup>, and December 31<sup>st</sup> without incurring overtime costs.
129. Specialized units in the Department (Tactical, Solos, Hondas, etc.) are an exception to this policy in that the very nature of their assignment requires flexible scheduling. EWW will be used for these units only if policing the event requires additional manpower beyond their normal operating complement.
130. Employees who are called in to work during their normal watch off pursuant to this Section shall be granted a minimum of four (4) hours' pay (or compensatory time-off pursuant to Article III., Section 2 of this Agreement) at the applicable rate or shall be compensated for all hours actually worked at the applicable rate, whichever is greater. The Department will make every reasonable effort to call-in only those employees whose service is necessary for the special event, and shall release employees when their service is no longer reasonably required.
131. Before preparing any operations order, District Station Commanding Officers shall confer with the Chief's designee as to whether or not this Special Order covers a specific event scheduled to occur within their district.

### **Section 14. Meals and Breaks During Demonstrations.**

132. The Department shall provide meals or a reasonable meal break time for employees assigned to special events where active duty thereat continues for more than four (4) consecutive hours. If the Department fails to or is unable to provide such meals, the Association may do so and will be reimbursed for the reasonable cost thereof on such occasions by the Department. This provision is subject to the development of procedures by the Department for the reimbursement for the cost of meals provided by the Association.
133. The Department shall assure that employees have reasonable access to restroom facilities during special events where active duty thereat continues for more than four (4) consecutive hours.



## *ARTICLE II - EMPLOYMENT CONDITIONS*

### Section 15. Courtesy Parking System for Court Attendance.

134. The Department agrees to maintain the current courtesy parking system for employees while attending court as a result of a subpoena on behalf of or in defense of the City or the Department when attendance is in the Hall of Justice.

### Section 16. District Station Parking.

135. The City will make a reasonable effort to provide adequate parking to employees at the district stations.

### Section 17. Code Book.

136. The Department shall post a complete set of Code Books and Department Orders on the Department's intranet. The posting shall include, but not be limited to, the following: Penal Code, Police Code, Vehicle Code, Park Code, Health Code, Fire Code, Training Bulletins, Information Bulletins, Special Orders, and General Orders. The Department shall also keep one complete set of Code Books and Department Orders in each station's equipment room for use by all employees through the station keeper or his/her designee.

### Section 18. Employee Training Reimbursement Program.

137. The City will contribute five thousand dollars (\$5,000) annually to the Employee Tuition Reimbursement Program for the exclusive use of employees covered under this MOU.
138. Subject to available monies, an employee may submit a request for tuition reimbursement up to five-hundred dollars (\$500) during each fiscal year.

### Section 19. Canine Ownership.

139. The officer/handler of a canine that will be retired from duty may submit a request for ownership to the Department where all of the following conditions are met:
1. The Department owns the canine;
  2. The officer/handler informs the Department of his/her interest in owning the canine in writing at least 14 business days before the canine's retirement; unless the canine is retired on shorter notice, in which case the officer/handler shall provide notice as soon as reasonably possible.
  3. The officer/handler signs a waiver and hold harmless agreement provided by the Department and approved by the City Attorney's Office;

## ARTICLE II - EMPLOYMENT CONDITIONS

4. The officer/handler agrees to accept immediate and complete ownership and control of and financial and other responsibility for the retired canine effective the retirement date;
  5. The officer/handler agrees to cooperate with the Department in effecting the transfer.
140. Notwithstanding the above, the Chief of Police, at his/her sole discretion, may prohibit the transfer of ownership of any retired canine.

### Section 20. Recruitment.

#### A. Lateral Signing Bonus

141. Laterally hired employees (i.e., fully sworn peace officers hired through the Lateral Entry Program) shall receive a \$2,500 signing bonus that shall be paid within 30 days after the employee's successful completion of the FTO program, and a \$2,500 signing bonus that shall be paid within 30 days after the employee's successful completion of his/her probationary period as a Police Officer, if the employee is still employed at the time the signing bonus is due to be paid.
142. This bonus is not considered "salary attached to the rank" and shall not be included for purposes of retirement benefit calculations and contributions in accordance with those Sections.

#### B. Recruitment Committee

143. The City and the Union agree to form a joint labor-management committee to improve the City's recruitment of highly-qualified police officers. The committee will include representatives from Police Department management, the POA, and the Department of Human Resources. For fiscal year 2006-07 and thereafter, the Police Department will receive an annual allocation of \$250,000 to fund committee activities, programs and expenses. These funds may be used to develop enhanced recruitment and marketing programs, applicant preparation activities, and innovative new recruitment and hiring strategies. These funds may also be used for cultural competency and other training for new and experienced officers through City University or similar resources.

### Section 21. Sergeants Rotation Pilot Program.

144. The parties have agreed to discuss the creation of a Sergeants Rotation Pilot Program.
145. The parties further agree to discuss this program in the interest of promoting career development for all sergeants. The City will only implement the program upon the mutual agreement of the parties.

### Section 22. Health & Safety Committee.

146. The parties agree to convene a Health & Safety Committee bi-annually to discuss health and

## ARTICLE II - EMPLOYMENT CONDITIONS

safety issues and potential updates to the Department's "Injury and Illness Prevention Program."

### Section 23. Substance Abuse Testing.

147. It is the policy of the City and County of San Francisco to maintain a safe, healthful and productive work environment for all employees. To that end, the City will act to eliminate any substance abuse. Substance abuse may include abuse of 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.

148. This provision will be administered consistent with any General Orders regarding substance abuse. Nothing in this provision is intended to make discipline related to substance abuse subject to the grievance procedure.

#### A. Mandatory Testing

149. Mandatory physical examinations for sworn employees shall include the submission of a urine specimen for routine analysis and screening for the presence of drugs or alcohol. Analysis and screening for drugs and alcohol is required for sworn employees in the following circumstances:

150. 1. Prior to the expiration of a newly hired employee's twelve (12) month probationary period.

151. 2. For employees being promoted to a higher rank, prior to the effective date of promotion.

152. 3. Prior to return from:

153. a.) medical leaves of absence in excess of thirty (30) calendar days, and

154. b.) unpaid leaves of absence in excess of ninety (90) calendar days.

155. 4. When a pattern of sick leave develops which indicates a reasonable suspicion of substance abuse.

156. 5. When there is reasonable suspicion that an employee is under the influence of drugs or alcohol while on duty.

157. 6. In the event an employee is involved in an on-duty vehicular accident resulting in death or an injury requiring transport for medical treatment. In such cases the employee will have the option for either a blood or urine analysis and screening. An "injury requiring transport for medical treatment" is an injury that results in the medical transport by ambulance of any person involved in the accident from the accident scene; or an injury to any person involved in the accident where that person declines transport by ambulance from the accident scene against medical advice (also known as "AMA"). If testing is required under this section, the SFPD shall direct the involved SFPD vehicle operator to undergo testing within twelve (12)

## ARTICLE II - EMPLOYMENT CONDITIONS

hours of the time of the accident, and shall conduct testing of the involved SFPD vehicle operator within twenty four (24) hours of the time of the accident. If testing is not directed and conducted within these time periods (assuming no interference by the SFPD vehicle operator that delays the SFPD's directive or testing), testing of the involved SFPD operator is not required or permitted under this paragraph.

### B. Reasonable Suspicion

158. Reasonable suspicion as used within this section is defined as a belief based on objective and articulable facts sufficient to lead a reasonable supervisor to suspect that an employee is under the influence of drugs or alcohol, such that the employee's ability to perform the functions of the job safely and effectively is impaired or reduced.
159. 1. Examples of situations in which there may be reasonable suspicion include but are not limited to:
160. a. A pattern of documented abnormal or erratic behavior;
161. b. The direct observation of drug or alcohol use; or a report 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;
162. c. The 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, etc.); or
163. d. A work-related incident in conjunction with other facts which together support reasonable cause.

### C. Employee Responsibilities

164. An employee must not:
165. 1. report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
166. 2. possess or use, or have the odor of alcohol or drugs on his/her breath during working hours; or
167. 3. directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee is on duty or on paid stand-by.
168. An employee must:
169. 1. submit immediately to requests for alcohol and/or drugs analysis when requested by an

## ARTICLE II - EMPLOYMENT CONDITIONS

authorized representative of the department director, or designee, and may request union representation;

- 170. 2. 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
- 171. 3. provide, within 24 hours of request, a current valid prescription in the employee's name for any drug or medication identified when a drug screen/analysis is positive.

### D. Management Responsibilities and Guidelines

- 172. 1. Managers and supervisors are responsible for consistent enforcement of this provision.
- 173. 2. The Department 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.
- 174. 3. Managers and supervisors shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
- 175. 4. Managers and supervisors shall not physically search employees without consent or a valid warrant.
- 176. 5. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
- 177. 6. One of the supervisory employees who made the reasonable suspicion determination shall inform the employee of the requirement that he/she undergo testing in a confidential manner.

## ARTICLE III. PAY, HOURS AND BENEFITS

### Section 1. Wages.

#### A. General Wage Increases:

178. Employees shall receive the following base wage increases:

July 1, 2018 – 3%

July 1, 2019 – 3%

The City and POA had previously negotiated the following:

1. Effective July 1, 2020, represented employees will receive a base wage increase of 2%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021.
2. The City and POA agree that subsection (1) above is superseded, and the 2% raise originally due on July 1, 2020 and delayed to the pay period including January 1, 2021 will be deferred to the close of business on June 30, 2022.

The City and POA had previously negotiated the following:

1. Effective January 1, 2021, represented employees will receive a base wage increase of 1%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on January 1, 2021, will be delayed by six (6) months and be effective close of business June 30, 2021.
2. The City and POA agree that subsection (1) above is superseded, and the 1% wage increase originally due on January 1, 2021 and delayed to the close of business on June 30, 2021 will be deferred to the close of business June 30, 2023.

Effective July 1, 2021, represented employees will receive a base wage increase of 3.0%, except that if the March 2021 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2021-2022 that exceeds \$200 million, then the base wage adjustment due on July 1, 2021, will be delayed by approximately six (6) months, to be effective on January 8, 2022.

### ARTICLE III - PAY, HOURS AND BENEFITS

Effective July 1, 2022, represented employees will receive a base wage increase of 3.0%, except that if the March 2022 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2022-2023 that exceeds \$200 million, then the base wage adjustment due on July 1, 2022, will be delayed by approximately six (6) months, to be effective on January 7, 2023.

#### Parity

The parties agree that if any new general base wage increase is agreed to, granted or awarded to fifty percent plus one (50% plus 1) of employees covered by the Public Employee Committee of the San Francisco Labor Council during the twelve (12) months following the approval of the First Amendment to this 2018-2021 Agreement, which wage increase would apply in Fiscal Years 2020-2021, 2021-2022 or 2022-2023, then the City shall provide that general base wage increase to the members of this bargaining unit in the same amount and on the same effective date. This provision does not apply to any existing wage increases or agreement on deferral of any existing wage increases.

#### B. Probationary Period and Step Advancement

##### 1. Probationary Period

- 179. A Class Q-2 officer shall be required to complete a 12-month full duty probationary period that shall begin the day following completion of the prescribed department field training officer program.
- 180. Except as specified in this section, the time to complete the required 12-month full duty probationary period shall be extended, for a period not to exceed 126 weeks from the date of appointment by: (1) the total time of absence for all periods of unpaid authorized leave; (2) all periods of disciplinary suspension; (3) all periods of sick leave, with or without pay; and (4) all periods of administrative assignments pending the results of administrative investigations.
- 181. The time to complete the required 12-month full duty probationary period shall be further extended for all periods of temporary modified duty or disability leave. Such extension may not exceed 52 weeks and, except as provided below, the total time to complete the required 12-month full duty probationary period shall not exceed 178 weeks from the date of appointment.
- 182. The time to complete the required 12-month full duty probationary period shall be extended, without any limitation, for all periods of time the officer is required to serve on active military duty or on jury duty.
- 183. Advancement to step 2 shall be made upon satisfactory completion of the probationary period.
- 184. The probationary period for all other ranks shall be 12 months.

## ARTICLE III - PAY, HOURS AND BENEFITS

### 2. Subsequent Step Advancement

185. a. Advancement to subsequent steps shall be made upon completion of one year of satisfactory service at that step. Salary adjustments shall be made effective the first full pay period following the effective date.
186. b. Satisfactory Performance: An employee's scheduled step increase may be denied if the employee's performance has been unsatisfactory to the City. The Chief shall provide an affected employee at least sixty (60) calendar days' notice of his/her intent to withhold a step increase. However, if the unsatisfactory performance occurs within that time period, the Chief shall provide reasonable notice of his/her intent to withhold a step increase at that time.
187. An employee's performance evaluation(s) may be used as evidence by the City and/or an affected employee for the purpose of determining whether a step advancement should be withheld.
188. If an employee's step advancement is withheld, that employee shall next be eligible for a step advancement upon his/her salary anniversary date in the following fiscal year. An employee's salary anniversary date shall be unaffected by this provision.
189. The denial of a step increase is subject to the grievance procedure; provided, however, that nothing in this section is intended to or shall make performance evaluations subject to the grievance procedure.

### C. Lateral and Current Permanent City Employees Step Plan and Salary Adjustments

190. Subject to the approval of the Police Chief, a current permanent City employee who has completed the probationary period and or a lateral new employee who is appointed to a Q-2, Q-3, or Q-4 rank shall enter at the salary step which is the same or closest to the salary which is immediately in excess of that received in their prior appointment provided that such salary shall not exceed the maximum of the salary schedule.
191. However, advancement to the next step in the Q-2, Q-3, or Q-4 rank shall not occur until the employee has served the satisfactory time as prescribed herein for an entry-level police officer to move to that step and satisfactory completion of the probationary period.

## Section 2. Overtime and Compensatory Time-Off.

### A. Overtime

192. The Chief of Police or designee may require employees to work longer than the normal work day or longer than the normal work week. Any time worked by an employee who holds a permanent rank below the rank of Captain under proper authorization of the Chief of Police or his/her designated representative or any hours suffered to be worked by an employee who holds a permanent rank below the rank of Captain in excess of the regular or normal work day or week shall be designated as overtime and shall be compensated at one-and-one-half times the



### ARTICLE III - PAY, HOURS AND BENEFITS

base hourly rate. Vacation leave and Legal Holidays shall be considered hours worked for overtime purposes. Mandatory, unscheduled overtime shall be calculated at the one-and-one-half (1.5) overtime rate.

193. The parties acknowledge that, for purposes of calculating overtime payable under the Fair Labor Standards Act (FLSA), 29 USC Section 207k, the work period for all sworn members is a 28-day period (171 hours). The implementation of the FLSA work period for all sworn members began at 0001 hours on Saturday, April 12th 1986 and continues to repeat each 28 days thereafter.
194. The parties further acknowledge that Captains are exempt from the application of the FLSA as permitted by 29 USC Section 213.
195. Captains are frequently required to work in excess of forty (40) hours per week to perform the job duties of their positions. In recognition of this work requirement, Captains will receive an eight percent (8%) wage increase in lieu of earning overtime or compensatory time off. Lieutenants on a “like work, like pay” Captain assignment will not be eligible for overtime. This provision shall not preclude Captains from compensation as defined in Section 10B of the Administrative Code.
196. Employees shall not be eligible for 10B overtime assignments during hours on SP, VA, FH, In-Lieu, or DP.
197. Effective January 1, 2021, employees shall not be eligible for 10B overtime assignments during: (a) hours on which an employee is regularly scheduled to work; or (b) if they have used more than twenty (20) hours of paid sick leave (pay code “SLP”) in the prior three months as reviewed on a quarterly basis per the schedule below.

Quarter	SLP Review	10B Period
1	9/1 – 11/30	1/1 – 3/31
2	12/1 – 2/28	4/1 – 6/30
3	3/1 – 5/31	7/1 – 9/30
4	6/1 – 8/31	10/1 – 12/31

As an example, for illustrative purposes only, an employee is eligible for 10B overtime in the first quarter of a calendar year (January 1 through March 31) if the employee has not used more than 20 hours of SLP in the period September 1 through November 30 of the prior year.

198. For purposes of (b) in the preceding paragraph, the City shall count sick leave paid (SLP) regardless of the reason for which it is used (e.g., sick with a cold; dentist appointment) with the following exceptions:
- Birth or adoption of a child; and
  - Bereavement leave pay (i.e., pay code “BLP”) due to the death of a spouse/domestic partner, parent, child or sibling. The SLP calculation shall include BLP for other reasons, for example, BLP for the death of a grandparent shall count to the calculation under (b).

- The SLP calculation shall not include:
  - COVID-19 Sick Pay (pay code COV)
  - Federal COVID-19 Sick Pay (pay codes ESP, ESU, ESF)
  - Unpaid Leave (pay code UPL)
  - Unpaid Sick Leave (pay code SLL)
  - Disability Leave Pay (pay code DLP) – the City will not consider SLP hours taken in conjunction with the filing of a disability claim but only if the employee affirmatively files the disability claims with WC and Payroll to ensure the SLP hours are excluded. If after review the disability claim is denied, the City will calculate those SLP hours in the quarter in which the determination on the disability claim is made (e.g., if an employee used SLP hours in February and the disability claim was denied in mid-May, the SLP would be included in the calculation for the April, May and June quarter).
  - Paid Parental Leave (PPL)

B. Compensatory Time-Off

199. 1. Employees who are required or suffered to work overtime shall receive paid overtime. However, employees may request to earn compensatory time-off at the rate of time-and-one-half in lieu of paid overtime, subject to the approval of the Chief of Police or designee and except as provided below:
200. a. Employees may not accrue more than 480 hours of compensatory time-off. Employees with more than 480 hours of compensatory time-off as of July 1, 2003 may not accrue additional compensatory time-off until and unless their compensatory time-off balances fall below 480 hours.
201. b. Effective June 30, 2010, employees may not accumulate a balance of compensatory time in excess of 300 hours. Any employee who has a compensatory time balance in excess of 300 hours on June 30, 2010, may maintain his or her compensatory time balance, but will not accrue any additional compensatory time until the balance drops below 300 hours.
202. c. Captains with existing compensatory time off balances in excess of 480 hours as of June 30, 2003 may continue to carry such balances provided that such balances may not exceed 1500 hours as of June 30, 2005, and 1300 hours as of June 30, 2007. For those occupying this rank, compensatory time-off balances in excess of these amounts on the dates set forth shall be forfeited. Captains newly hired or promoted into such ranks on or after July 1, 2003 may not accrue more than 480 hours of compensatory time-off.
203. d. Effective July 1, 2008, an employee that is promoted to a higher rank shall have his or her compensatory time balances paid out at the lower rank prior to promotion; however, at his/her option, he/she may maintain up to 80 hours accrual.

**ARTICLE III - PAY, HOURS AND BENEFITS**

204. e. The City has the right to pay off accrued compensatory time off above 480 hours at its discretion, so long as such a pay off is uniform, by percentage, as to all employees within one of the four bureaus (i.e., FOB, Admin., Investigations, Airport).
205. 2. Employees shall provide the Department with 72 hours notice when requesting use of compensatory time-off. Compensatory time-off requests shall not be denied, except in writing when use of compensatory time-off will unduly disrupt operations or when an employee fails to provide 72 hours notice.

Section 3. Holidays.

206. A. Employees are entitled to the following holidays each year with pay:

New Year's Day	Fourth of July
Martin Luther King, Jr.'s Birthday	Labor Day
Indigenous Peoples Day & Italian American Heritage Day	Thanksgiving Day
Veteran's Day	The Day after Thanksgiving
Presidents' Day	Christmas Day
Veteran's Day	Four (4) floating holidays each
Memorial Day	fiscal year

207. In addition, included shall be any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States.
208. The above floating holidays are to be taken on days selected by the employee subject to the approval of the Department which shall not be unreasonably withheld. No compensation of any kind shall be earned or granted for floating holidays not taken. Floating holidays received in one fiscal year but not used may be carried forward to the next succeeding fiscal year. The number of floating holidays carried forward to a succeeding fiscal year may not exceed the total number of floating holidays received in the previous fiscal year. Floating holidays may be taken in hourly increments up to and including the number of hours contained in the employee's regular shift.
209. B. Employees who are required to work on any of the above-listed holidays, except floating holidays, shall receive additional compensation at the rate of time-and-one-half, or compensatory time at the rate of time-and-one-half at the employee's option pursuant to Article III., Section 2 of this Agreement.
210. C. Employees working a work week other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regularly scheduled days off. Employees whose holidays are changed because of shift rotations shall be allowed another day off if a legal holiday falls on one of their days off.

### ARTICLE III - PAY, HOURS AND BENEFITS

211. D. If the provisions of this section deprive any employee of the same number of holidays that an employee receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the employee and the appropriate supervisor with the approval of the appointing officer. In no event shall the provisions of this section result in such employee receiving more or less holidays than an employee on a Monday through Friday work schedule.
212. E. This section shall not modify existing holiday compensation practice.

#### Section 4. Premiums.

213. There shall be no pyramiding of premiums in this section (i.e., each premium shall be calculated against the base rate of pay). Premiums shall be provided to employees as follows:
- A. Acting Assignment Pay (Like Pay for Like Work)
214. Eligibility for acting assignment pay will be determined as follows:
215. a. If the senior ranking member on duty, commanding officer, night supervising captain or weekend duty captain determines a position is to be filled temporarily by an employee in the next lower rank, the employee temporarily filling that position shall be compensated at the salary of the rank being filled for the time worked in that temporary position, provided that no member holding the temporarily filled rank is working in the assigned unit on the same watch (i.e., double day). The employee beginning the acting assignment cannot be displaced by a more senior employee of the same rank who begins their shift after the acting assignment has begun.
216. b. Captains who are required to perform duties of the next highest rank are not entitled to receive acting assignment pay compensation unless they receive prior approval from the Deputy Chief of the employee's respective bureau. If the Deputy Chief of the employee's respective bureau determines a position is to be filled temporarily by an employee in the next lower rank, the employee filling that position shall be compensated at the salary of the rank being filled for the time worked.
217. c. The employee filling a position must be permanent. Absent the commanding officer being able to articulate specific reasons for not selecting the senior employee, seniority in rank shall control. The Chief of Police, or designee, however, may designate officers (including commissioned officers), to temporarily fill vacancies caused by officers in the next highest rank who are off on long term leave status or have retired.
218. d. For the midnight hours (i.e., 0100 and 0500 or 0200 and 0600) when no Lieutenant is scheduled to work, the Sergeant assigned to fill the Lieutenant position pursuant to subsection a will be compensated at the Lieutenant rate. No Police Officer, however, will be permitted to fill the position of the Sergeant serving as a Lieutenant.

**ARTICLE III - PAY, HOURS AND BENEFITS**

219. e. An employee entitled to receive acting assignment pay compensation must complete a “Compensation Request/Equal Pay” (SFPD 319) card for the hours actually worked and submit the card to Payroll by the end of the pay period.
220. f. The completed card must include the name and rank of the person replaced, if any, the beginning and ending dates and times of the acting assignment pay status and the actual dates circled on the back of the card or in accordance with any automated or alternative procedures established by the Police Department.
221. g. Upon designation by the Chief of the Department that an assignment shall be for longer than thirty (30) calendar days, the employee performing the duties of a higher rank shall receive the compensation of the higher rank for the duration of the assignment (including paid leave).
222. All of the above conditions must be met before acting assignment compensation can be approved. In the normal absence of a superior officer, the senior ranking officer on duty will be in charge, but will not be expected to perform the duties of the higher rank.

**B. Field Training and Training Unit Coordinator Pay**

**1. Field Training**

223. Employees assigned to Field Training Officer or Field Training Sergeant responsibilities shall receive the following premiums while training:

Officer (Q2-Q4)	\$550.00 Per Pay Period
Supervisor (Q50-Q52)	\$400.00 Per Pay Period
Station Coordinator (Q50-Q52)	\$125.00 Per Pay Period

224. Additionally, when a class is in the FTO program, certified FTO police officers and sergeants assigned to the FTO office shall be eligible for FTO premiums described above.

**2. Training Unit Coordinator Pay**

225. Employees assigned to Training Unit Coordinator responsibilities shall receive \$125.00 per pay period.
226. Employees shall no longer receive compensatory time-off for Training Unit Coordinator responsibilities. Field Training and Training Unit Coordinator Pay shall not be included for purposes of retirement benefit calculations or contributions.

**C. Bomb Squad/SWAT Team Pay**

227. Employees assigned to the Bomb Squad or the SWAT team shall receive a premium of 5% biweekly. Employees assigned to both the Bomb Squad and the Swat Team shall receive a

### ARTICLE III - PAY, HOURS AND BENEFITS

premium of 5% for one of the two assignments, but not both. This premium shall not be included for purposes of retirement benefit calculations or contributions.

#### D. Specialist Pay

228. An employee designated as a Specialist and assigned to the Specialist Team shall receive a premium of three percent (3%) biweekly. This premium shall not be included for purposes of retirement benefit calculations or contributions. Specialists are subject to changes in watches and assigned work locations for operational reasons. The number of Specialist positions available per shift or location shall be determined by the Chief or his/her designee.

#### E. Motorcycle Pay

229. Employees below the rank of captain assigned to Motorcycle and Honda units shall continue to receive a premium in an amount in accord with current practice pursuant to Charter Section A8.405(b). It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees below the rank of captain assigned to Motorcycle and Honda units covered by this Agreement and shall be included for purposes of retirement benefit calculations or contributions.

#### F. Peace Officer Standards Training (POST) Certificate Pay

230. 1. Active officers who obtain sufficient education and experience to meet the minimum qualifications of the ranks containing a POST certificate requirement shall be appointed to such ranks within thirty (30) days after they present to the Appointing Officer evidence that they possess the POST certification required for the rank as follows:

<u>Rank</u>	<u>Basic</u>	<u>Intermediate</u>	<u>Advanced</u>
Police Officer	Q-2	Q-3	Q-4
Assistant Inspector	Q-35	Q-36	Q-37
Sergeant	Q-50	Q-51	Q-52
Inspector	0380	0381	0382
Lieutenant	Q-60	Q-61	Q-62
Captain	Q-80	Q-81	Q-82

231. A. Effective July 1, 2018, the rate of pay for the rank requiring intermediate POST shall be 5% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 7% higher than the rate of pay for the rank requiring basic POST.
232. B. Effective July 1, 2019, the rate of pay for the rank requiring intermediate POST shall be 6% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 8% higher than the rate of pay for the rank requiring basic POST.
233. 2. It is the mutual understanding of the City and the Association that the compensation attached to those ranks for which a POST certificate is required is not an increase in the

**ARTICLE III - PAY, HOURS AND BENEFITS**

general rate of remuneration for the ranks or positions of Q-2, Q-35, Q-50, 0380, Q-60 and Q-80, within the meaning of the Charter of the City and County, including but not limited to Section A8.559-6.

234. Should any retiree or other party initiate litigation challenging this mutual interpretation, and the mutual intent of these parties, and seek to obtain an adjustment of allowances for any Police Department retirees pursuant to the Charter of the City and County based upon this Agreement, the SFPOA shall fully support the defense of such claims by the City and County, and shall take appropriate legal steps to intervene in, and become party to, such litigation and in such litigation will fully support the mutual intention of the parties as described in this Agreement.
235. The parties and each and every individual employee specifically agree and recognize that this Agreement creates no vested rights. Should any final judgment by superior court or court of competent jurisdiction at any time adjudge and decree that retirees are entitled to an adjustment of their allowances as a result of the establishment of these ranks, then the Agreement which created these ranks and set a new base rate for such ranks to be included within the rate of remuneration for pension calculation purposes shall be null and void, and shall cease immediately. If such a judgment issues, the parties further hereby agree that the base pay rate and premium of each appointee to these ranks shall retroactively revert to the then current base rate of pay and to the premium eligibility provided by the Memorandum of Understanding prior to the creation of these ranks. The parties also agree to retroactively recalculate the retirement contribution and allowance of such officers as if this agreement had never been in effect. Provided, however, that if such a recalculation should occur, no bargaining unit employee who had received compensation based on the rates of pay for these ranks shall be obligated to pay back any monies which they had received between the effective date of their appointment and the time of such recalculation. Thereafter, the City and the Association shall mutually engage in meeting and conferring in order to reach agreement on alternative benefits

**G. Retention Pay**

236. Employees who possess an intermediate POST certificate or higher and have completed the requisite years of service as a sworn member of the Department or Airport Bureau shall receive the following retention pay:

237. Effective July 1, 2018, eligible employees shall receive:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
23	2%
30	additional 4% (6% total)

238. The City and POA had previously negotiated the following:

239. 1. Effective July 1, 2020, eligible employees shall receive the following retention pay, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's

### ARTICLE III - PAY, HOURS AND BENEFITS

Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the increase in retention pay on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021:

<u>Years of Service</u>	<u>Premium Incremental (Cumulative)</u>
10	1%
15	additional 2% (3% total)
20	additional 2% (5% total)
25	additional 2% (7% total)

2. The City and POA agree that the effective date in subsection (1) above is superseded, and the effective date of the retention pay premium due in the pay period including January 1, 2021 shall be deferred until the close of business June 30, 2022.

240. Eligibility for retention pay is subject to the following conditions and limitations:

241.
  - a. employees that have been issued a suspension of eleven (11) or more days during the preceding twelve (12) months shall not be eligible; and
  - b. employees must have a POST intermediate certificate or higher.

242. Retention pay shall be included for purposes of retirement benefit calculations and contributions as permitted by the Charter. It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who completed the above defined conditions.

#### H. Experienced Officer Incentive Pay

243. To ensure each district station is adequately staffed with senior officers at night, the most senior officer and the most senior sergeant (i.e., seniority in rank) at each district station and the Patrol Division of the Airport Bureau and on each watch with twenty-three (23) or more years of service shall receive a premium in the amount equal to 2% of base pay as additional incentive to work night duty assignments, subject to the following conditions and limitations:

244. 1. Night duty assignments are defined as 2100-0700 hours (9:00pm-7:00am);
245. 2. The premium shall be limited to the Patrol Division of the Airport Bureau and to night duty field assignments in FOB District Stations. (Station duty and station keeper assignments shall not be eligible for Experienced Officer Incentive Pay);
246. 3. Only the ranks of police officer (Q2-Q4) and sergeant (Q50-Q52) shall be eligible to receive Experienced Officer Incentive Pay;
247. 4. If the senior officer on a watch is off-duty, then the next senior officer with twenty-three years or more of service shall be eligible;



### ARTICLE III - PAY, HOURS AND BENEFITS

248. 5. Employees that have been issued a suspension (whether the suspension was served or held in abeyance) in the three years immediately preceding shall not be eligible;
249. 6. Experienced Officer assignments shall be for a minimum of twelve (12) months;
250. 7. Employees shall only receive Experienced Officer Incentive Pay for actual hours worked.
251. In accordance with the provisions of Charter Section A8.597-1, this premium shall be included for purposes of retirement benefit calculations and contributions. This amount is not considered “salary attached to the rank” as defined by Charter Sections A8.595-1, A8.559-1, A8.558 and A8.544.

#### I. Night Shift Differential

252. Night shift differential shall be paid at the rate of six and one-quarter percent (6-1/4%) more than the base rate for hours actually worked between the hours of 6:00 p.m. and 6:00 a.m. This night differential shall not be included for purposes of retirement benefit calculations or contributions.

#### J. Bilingual Pay

253. Bilingual pay, in the amount of eighty dollars (\$80) biweekly, shall be paid to employees who have been certified by the Department of Human Resources as having proficiency in translating to and from one or more foreign languages, as designated by the City, including sign language for the hearing impaired and Braille for the visually impaired. Upon the approval of his/her supervisor, and subject to Department of Human Resources guidelines, the employee shall receive such pay when they are required to utilize such skills. Bilingual pay shall not be included for purposes of retirement benefit calculations or contributions. Effective January 1, 2019, at the City’s discretion, an employee may be required to recertify not more than once annually in order to continue receiving the pay.

### Section 5. Other Pays.

#### A. Canine Duty

254. Employees assigned to canine duty shall receive additional compensation bi-weekly equal to 5% of base wage as compensation for off duty time authorized and expended in the care and maintenance of the assigned canine, including feeding, grooming, exercising and cleaning up after the canine. This amount has been calculated by the parties to represent approximately eight hours of overtime per week paid at one and one-half times the hourly rate of the federal minimum wage. This extra compensation is not to be considered base pay or premium pay, nor shall it be included for purposes of retirement benefit calculations or contributions.

### ARTICLE III - PAY, HOURS AND BENEFITS

255. In addition to the above referenced overtime compensation for the ordinary and extraordinary care of the canine and, as authorized by the Department, the City will provide for basic canine food and supplies and shall provide for all appropriate veterinary care through approved City vendors. The City will reimburse other expenses reasonably and customarily incurred in the maintenance and care of the dog. Employees assigned to the Airport Bureau who perform canine duties shall be provided with vehicles for transportation of canines from their home to work and back.

#### B. Standby Pay

256. Employees, who as part of the duties of their positions are required by the Chief of Police or designee to be on standby when normally off duty and to be instantly available to return to work to perform their duties, shall receive pay at the rate equivalent to two (2) hours of their regular rate of pay for each assignment that begins on a regularly assigned work day, and three (3) hours of their regular base rate of pay for each assignment that begins on a regularly scheduled day off. The duration of the assignments shall be determined by the Chief of Police or designee based upon the operational needs of the Department, but shall not exceed twenty-four (24) hours.
257. Standby pay shall not be allowed in the classes or positions whose duties are primarily administrative in nature, as designated by the Chief of the Department. Standby premiums shall not be included for purposes of retirement benefit calculations or contributions.

#### C. Call-Back Pay

258. An employee who is called back to work following the completion of his/her work day and departure from his/her place of employment shall be granted a minimum of three (3) hours of pay at the applicable rate, or shall be paid for all hours actually worked at the applicable rate, whichever is greater. If an employee on standby is called back to work, call-back pay shall be paid in lieu of the standby premium.

#### D. Court Appearance Pay and Administrative Hearings.

259. a. Watch-Off Status. Employees appearing for court on watch-off days will receive three (3) hours of court appearance premium pay (50% above base salary) for their first court appearance commencing with the time indicated on the subpoena. This also includes court preparation and conferences when accompanied by a same day court appearance. No court appearance premium pay will be allowed for an employee's meal period.
260. Employees appearing in court for more than three (3) hours will receive court appearance pay on an hour-for-hour basis when appearing on scheduled watch-off days.
- b. Scheduled-to-Work Status.

**ARTICLE III - PAY, HOURS AND BENEFITS**

261. 1. Employees appearing for court less than one hour prior to the beginning of their scheduled watches will receive one (1) hour of court appearance premium pay.
262. 2. Employees appearing for court more than one (1) but less than two (2) hours prior to the beginning of their scheduled watches will receive two hours of court appearance premium pay.
263. 3. Employees appearing for court more than two (2) hours, but less than three (3) hours prior to the beginning of their scheduled watches will receive three (3) hours of court appearance premium pay.
264. 4. Employees who appear for court during the morning session and are scheduled to start work at 1200 hours will be entitled to a minimum of three (3) hours of court appearance premium pay regardless of the time indicated on the subpoena. No court appearance premium pay will be allowed for an employee's meal period.
265. 5. Employees appearing for court for more than three (3) hours will receive court appearance premium pay on an hour for hour basis when off-duty during the entire period. No court appearance premium pay will be allowed for an employee's meal period.
266. c. Court Standby. Employees placed on court standby without appearing in court will receive (2) hours of court appearance premium pay only if they are off-duty the entire call-in period indicated on the subpoena. On-duty time includes any overtime for purposes of this section.
267. Employees on sick leave with pay or disability leave who appear in court or are placed on standby are not entitled to additional compensation. Employees are paid as though they were working during these leave periods.
268. Employees on suspension who are subpoenaed and appear in court or are on standby are entitled to compensation at their regular rate of pay, not at the court appearance pay rate.
269. d. District Attorney Conferences. An employee attending an attorney's conference but not appearing in court will receive court appearance pay on an hour-for-hour basis.
270. e. Civil Court. Compensation requests for civil court appearances in which neither the City nor the Department is a party will be processed, reviewed, and certified by the Accounting Section of the Fiscal Division. These requests must be sent to the Accounting Section along with a copy of the subpoena and the record of Civil Court Appearance (SFPD 203) approved by the requesting employee's commanding officer. Employees will receive a court appearance pay on a half-hour for half-hour basis.
271. The Legal Division will review and approve overtime requests for civil cases in which the City or Department is a party. If approved, compensation shall be awarded on a half-hour for half-hour basis.

### **ARTICLE III - PAY, HOURS AND BENEFITS**

272. f. Administration Hearings. Any employee who, as part of his/her assigned duties, is required to appear at any administrative hearing while off duty shall receive court appearance pay for time actually spent, or shall receive two (2) hours of court appearance pay whichever is greater.
273. g. Employees on VA, who are required by subpoena to appear in court in a criminal case, will receive court appearance pay only when their appearance occurs on a date(s) for which the employee had a previously approved vacation request for 40 hours or more that predated the service of the subpoena. In all other cases, employees will be compensated only as provided by the current Department Bulletin on the subject of court compensation.
274. h. Any court appearance pay provided in this section shall not be included for purpose of retirement benefit calculations or contributions.

#### **Section 6. Uniform and Clothing Allowance.**

275. Employees shall receive, as part of their regular rate of pay, one thousand one hundred dollars (\$1,100) per year as an annual uniform allowance.
276. In exchange for this additional compensation, employees shall be responsible for the maintenance, care and replacement of the following standard uniform items: shirts, pants, shoes, BDUs and regular raingear.
277. Newly hired recruit officers shall not be entitled to the annual uniform allowance for the first year of service. Such recruit officers shall continue to be supplied with an initial set of uniforms.
278. Other safety equipment and uniform items, including specialized raingear and boots worn by the Mounted Unit, Solo Motorcycles and Park and Beach Unit, shall continue to be issued by the Department. Uniform items purchased by employees shall meet all specifications as provided by the San Francisco Police Department. The specifications for uniform items to be purchased by employees follows as Appendix B.
279. Also in exchange for the annual uniform allowance, employees shall assume all costs of maintenance, repair and damage to the standard uniform items, including damage or repair to normal business attire worn by inspectors and other non-uniformed sworn employees. Employees shall be prohibited from filing personal property claims under General Order 3.15 for these items of clothing. The annual uniform allowance is provided specifically for employees to purchase the above listed standard uniform items. Employees shall, at all times, maintain a sufficient quantity and quality of uniform items to meet uniform and grooming standards at all times.
280. This provision will satisfy any and all obligations to provide employees with uniform clothing and maintenance.

#### **Section 7. Health and Dental Coverage.**

### *ARTICLE III - PAY, HOURS AND BENEFITS*

281. If fifty percent plus one (50%+1) of the employees covered under the Public Employee Committee of the San Francisco Labor Council (PEC) and the City agree to a change to their contribution model for employee dental premiums or health insurance premiums, with the change to be effective July 1, 2019, for calendar year 2020, then the City and the POA will reopen the MOU on dental or health insurance premium contributions only, with any resulting impasse being subject to interest arbitration under Charter section A8.590-5. The parties will complete reopener negotiations and impasse procedures, including, but not limited to, the 10-day period under Charter section A8.590-5(e), by no later than August 15, 2019.

#### *A. Employee Health Coverage.*

282. Except as provided below, the City shall contribute annually for employee health benefits, the contribution required under the Charter.

283. Except as provided below, in addition, the City shall contribute the full premium for the employee's own health care benefit coverage for "medically single" employees (i.e., employees not receiving a City contribution for dependent health care benefits).

#### *B. Dependent Health Coverage.*

284. Except as provided below, the City shall contribute the greater amount of \$225 per month or 75% of the dependent rate charged by the City to employees for Kaiser coverage at the dependent plus two or more level.

#### *C. Health Coverage Effective January 1, 2015*

285. 1. If, by July 1, 2014, the Public Employee Committee of the San Francisco Labor Council (PEC) and the City agree to a contribution model for employee health insurance premiums based on the City's contribution of a percentage of those premiums and the employee's payment of the balance (Percentage-Based Contribution Model), to be effective January 1, 2015 (for calendar year 2015 and thereafter), then effective January 1, 2015 the City shall contribute toward the health premiums for enrolled POA members the same percentage described in the PEC Percentage-Based Contribution Model, for the applicable health insurance plan, unless the City and the POA mutually agree to a different Percentage-Based Contribution Model. If the PEC and the City do not agree by July 1, 2014 to a new Percentage-Based Contribution Model to be effective January 1, 2015, then the City and the POA will reopen the MOU on health insurance premium contributions only, with any resulting impasse being subject to interest arbitration under Charter section A8.590-5. Reopener negotiations and impasse procedures, including, but not limited to, the 10-day period under Charter section A8.590-5(e), will be completed by no later than August 15, 2014.

286. 2. To ensure that all employees enrolled in health insurance through the City's Health Service System (HSS) are making premium contributions under a Percentage-Based Contribution Model and therefore have a stake in controlling the long term growth in health insurance costs, it is agreed that, to the extent the City's health insurance premium contribution under a Percentage-Based Contribution Model is less than the "average contribution" for the

### **ARTICLE III - PAY, HOURS AND BENEFITS**

City's HSS members, as established under Charter section A8.428(b) (Average Contribution), then, in addition to the City's contribution, the employee's health insurance premium contribution shall be deemed to apply to the annual Average Contribution. The parties intend that the City's contribution toward premiums for members' health care should not exceed the amount established under Percentage-Based Contribution Model.

287. 3. Upon implementation of new contribution rates effective on January 1, 2015, Article III., section 8.C shall supersede Article III., sections 8.A and 8.B, and those sections will no longer be effective.
288. D. The aforesaid contributions shall be paid to the City Health Services System, not be considered as a part of an employee's salary for the purposes of computing straight time earnings, compensation for overtime worked, premium pay, retirement benefits, or retirement contributions; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.
- E. Dental Coverage.
289. The City shall continue to provide dental benefits at the existing level.
- 287a. Effective July 1, 2011, employees who enroll in the Delta Dental PPO Plan shall pay the following premiums for the respective coverage levels: \$5/month for employee-only, \$10/month for employee + 1 dependent, or \$15/month for employee + 2 or more dependents.
290. F. Employees shall be permitted to choose which available City plan they wish to participate in.
291. G. Benefits that are made available by the City to the domestic partners of other City employees shall simultaneously be made available to the domestic partners of members of the Department.
- H. Hepatitis B Vaccine.
292. The City shall provide, at its cost, Hepatitis B vaccine immunization for employees whose health plans do not provide the benefit.
- I. Annual Tuberculosis Screening.
293. The City will provide, at its cost, annual tuberculosis screening for employees.
- J. Employee Assistance Program.
294. The City shall continue to provide the existing or equivalent employee assistance benefits presently provided by United Behavioral Health.

#### **Section 8. Retirement.**

- A. Mandatory Employee Retirement Contribution.

### **ARTICLE III - PAY, HOURS AND BENEFITS**

295. For the duration of this Agreement, employees shall pay their own retirement contributions in accordance with the Charter. The parties acknowledge that said contributions satisfy the requirements of Charter Sections A8.595-11(d) and A8.597-11(d) for the duration of this Agreement.
296. Notwithstanding paragraph 293. above, the parties agree to further extend employee cost sharing by increasing the retirement contribution for all employees by three percent (3%) for the two-year period beginning July 1, 2011 and ending June 30, 2013. As of July 1, 2013, the parties agree to effectuate any applicable cost sharing provisions of a Charter amendment initiated by the Mayor, approved by the Board of Supervisors, and approved by the voters in the November 2011 election.
297. If the majority of City & County of San Francisco employees agree to an employee contribution to fund retiree health benefits, the parties agree to reopen the MOU on the subject of an employee contribution to fund retiree health benefits. This reopener is subject to the impasse resolution procedures as set forth in Charter Section A8.590-1 et seq.
298. B. Employees with twenty (20) years' service who leave the Department, but who retain their membership in the retirement system, shall be deemed to be retired for purposes of Penal Code Section 12027.
299. C. Rule changes by the City's Retirement Board regarding the crediting of accrued sick leave for retirement purposes shall be incorporated herein by reference. Any such rule changes, however, shall not be subject to the grievance and arbitration provisions of current Memorandum of Understanding or the impasse procedures of Charter Section A8.590-1, et. seq.
- D. Pre-Retirement Planning Seminar and Retirement Ceremony.
300. The City shall continue to offer pre-retirement seminars and retirement ceremonies for bargaining unit members. These functions shall be administered by the Police Academy in consultation with the Police Officers Association. Bargaining unit members shall be offered the opportunity to attend the seminar in order of the number of years of service credit they have earned towards retirement. A preference shall be given to those members who have filed for retirement with the Retirement System. The City's cost for such services shall not exceed \$15,000 per fiscal year.
- E. Retirement Restoration Payment
- For employees who retire between December 26, 2020 and June 30, 2024, the City will provide restoration back pay for the following deferred wage and premium pay increases on regularly scheduled hours for the 12-month period that preceded the date of retirement:
- 2% deferred from December 26, 2020 through the close of business June 30, 2022;
  - 1% deferred from the close of business June 30, 2021 through the close of business June 30, 2023; and
  - Retention pay deferred from December 26, 2020 through the close of business June 30, 2022.

### ARTICLE III - PAY, HOURS AND BENEFITS

Restoration payments constitute pensionable compensation, to the maximum extent permissible under the Charter.

As an example, by way of illustration only, if an employee retires on June 30, 2021, the City would provide back pay to the employee for the period December 26, 2020 through June 30, 2021, in the amount of 2% on regularly scheduled hours. As another example, by way of illustration only, if an employee retires on June 30, 2022, the City would provide back pay to the employee for the period July 1, 2021 through June 30, 2022, in the amount of 1% and 2% on regularly scheduled hours.

#### Section 9. Wellness Programs.

##### A. Wellness Program.

301. The City shall continue to provide a wellness program as follows:
302. 1. Employees must establish and maintain a core bank of sick leave hours in order to qualify for the wellness program. That core bank shall be a minimum of three hundred (300) hours.
303. 2. Once an employee has established their core bank of sick leave hours (as provided in (a) above) they shall be entitled to an annual conversion of sick leave hours for cash out payment under the above conditions. If an employee utilizes thirty (30) hours or less of sick leave in a fiscal year, they shall be entitled to cash out up to fifty (50) hours accrued during that fiscal year. If an employee utilized more than thirty (30) hours of sick leave in a fiscal year, they are not eligible for any sick leave cash out. Sick leave hours donated to catastrophic sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.
304. 3. Payment of the cash out shall take place on annual basis on the pay period closest to June 1 for each remaining fiscal year of this Agreement.
305. 4. The aforesaid payments shall not be considered as part of an employee's salary for the purpose of computing retirement benefits or retirement contributions.
306. 5. This program shall be suspended for Fiscal Years 2009-2010 and 2010-2011.

##### B. Pilot "wellness incentive program" to promote workforce attendance:

307. A full-time employee leaving the employment of the City upon service or disability retirement may receive payment of a portion of accrued sick leave credits at the time of separation. To be eligible, an employee must have utilized one hundred and sixty (160) hours or less of sick leave during the final two-year period prior to retirement. Sick leave hours donated to catastrophic



### ARTICLE III - PAY, HOURS AND BENEFITS

sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.

308. The amount of this payment shall be equal to two percent (2%) of accrued sick leave credits at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave credits, as set forth under Civil Service Commission Rules, shall not be included in this computation and shall be compensated pursuant to those Rules.

309. Example of Calculation

Employee A retires with 20 years of service.  
Employee A has a sick leave balance of 500 hours.  
Employee A has a base salary rate of \$25.00 per hour at the time of separation.

Wellness Incentive = 2% for each year of service x 20 years of service = 40%  
40% x 500 hours = 200 hours.  
200 hours x \$25 (base salary at time of separation) = \$5,000

310. The number of hours for which an employee may receive cash payments shall not exceed one thousand forty (1040) hours, including any vested sick leave.

311. A wellness incentive bonus payment shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits or retirement contributions.

312. The beneficiaries of employees who are killed in the line of duty, whose names are engraved on the Memorial Wall of the SFPD Hall of Justice, shall receive payments provided by the wellness incentive program.

313. The Pilot "wellness incentive program" to promote workforce attendance shall sunset on June 30, 2019.

#### Section 10. Paid Sick Leave Ordinance.

314. San Francisco Administrative Code, Chapter 12W Paid Sick Leave Ordinance is expressly waived in its entirety with respect to employees covered by this Agreement.

#### Section 11. Emergency Child Care Reimbursement Pilot Program

315. The Department will allocate up to fifty thousand dollars (\$50,000) annually for an Emergency Child Care Reimbursement fund. Under this policy, a child is defined as a natural or adopted child of the member under the age of 18. Employees who are held over for mandatory overtime, called back to work, or held over beyond their scheduled watch will be eligible to receive reimbursement up to twenty-five dollars (\$25) per each 30 minutes up to a maximum of one hundred dollars (\$100) per incident based on the employee's certification verifying the dates, times, and expense incurred.

### **ARTICLE III - PAY, HOURS AND BENEFITS**

Reimbursement shall not exceed six incidents per employee. This pilot program will sunset on June 30, 2021.

#### **Section 12. Parental Release Time**

- 316. An employee who is a parent of or has unpaid child rearing responsibility for one or more children attending K-12 school or a licensed child care facility shall be granted up to two (2) hours of paid Parental Release Time per six (6) month period (i.e. July 1 to December 31; January 1 to June 30) to participate in parent-teacher conferences.
- 317. In addition, employees are allowed up to forty (40) hours of unpaid Parental Release Time per fiscal year, not exceeding ten (10) hours in any calendar month, to participate in the K-12 school or licensed child care facility activities of any child of the employee or for whom the employee has unpaid child rearing responsibilities. Employees may use accrued vacation, compensatory time off, or floating holidays for this unpaid Parental Release Time.
- 318. Unused Parental Release Time hours do not roll over.
- 319. To qualify for either paid or unpaid Parental Release Time, the employee must follow the Department's time off approval process and give reasonable notice to his/her immediate supervisor before taking the time off. The employee must provide written verification from the school or licensed child care facility that he/she participated in a parent teacher conference (for paid Parental Release Time) or school/child care related activities (for unpaid Parental Release Time) on a specific date and at a particular time, corresponding to the time off.
- 320. The Department may deny a request for Parental Release Time if the request is untimely or for operational needs. Request will not be unreasonably denied. Denials of requests for Parental Release Time under this section are not subject to the grievance procedure under this Agreement.

#### **Section 13. Flexible Watch Assignment Committee**

- 321. The City shall establish a Joint Labor-Management Committee to study a Flexible Watch Assignment Pilot Program. The Committee shall convene no later than November 1, 2018. The Committee shall discuss the possibility of establishing a Flexible Watch Pilot Program. The Committee shall be comprised of up to ten members: five Department representatives and five Association representatives. A Department representative and an Association representative shall jointly chair the Committee. The Committee shall conclude its research and issue a written report with recommendations on the feasibility of creating a Flexible Watch Assignment Program to the Chief of Police by May 30, 2019. The City will provide release time to the Association members to attend Committee meetings.

## ARTICLE IV. SCOPE

### Section 1. Severability.

322. Should any provision of this Memorandum or the application of such provision to any person or circumstances, be held invalid, the remainder of this Agreement or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

### Section 2. Duration.

323. This Agreement shall be effective upon ratification and shall be effective from July 1, 2018 through June 30, 2023.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this

\_\_\_\_\_ day of \_\_\_\_\_, 2020.

FOR THE CITY

FOR THE ASSOCIATION

\_\_\_\_\_  
Micki Callahan Date  
Director, Human Resources Department

\_\_\_\_\_  
Tony Montoya Date  
President, Police Officers' Association

\_\_\_\_\_  
Carol Isen Date  
Employee Relations Director

APPROVED AS TO FORM:  
Dennis Herrera, City Attorney

\_\_\_\_\_  
Katharine Hobin Porter Date  
Chief Labor Attorney

**TENTATIVE AGREEMENT BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND  
SAN FRANCISCO POLICE OFFICERS ASSOCIATION  
UNITS P-1 AND P-2A**

The parties hereby agree to enter a Tentative Agreement as follows, subject to approval by the San Francisco Board of Supervisors and ratification by the San Francisco Police Officers' Association:

- 1. Amendment No. 1 to the 2018-2021 Memorandum Of Understanding Between the City and County of San Francisco and San Francisco Police Officers Association Units P-1 And P-2a**
- 2. Settlement Agreement, General Release, and Covenant not to Sue, entered regarding two grievances (ERD No. 38-20-3788 [Sgt. Seth Riskin and Capt. Ric Schiff] and ERD No. 38-20-3822[all other employees in SFPOA represented classifications])**
- 3. Non waiver language attached.**

**FOR THE CITY**

Date: 9/11/2020

**Carol Isen**  
Digitally signed by Carol Isen  
DN: cn=Carol Isen, o=Department of Human  
Resources, ou=Employee Relations Division,  
email=carol.isen@sfgov.org, c=US  
Date: 2020.09.11 14:20:48 -07'00'

Carol Isen  
Employee Relations Director

**FOR THE UNION**

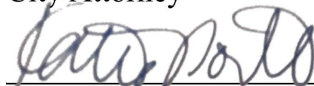
Date: 9/11/2020

DocuSigned by:  
**Tony Montoya**  
A53970EB05C04D4

Tony Montoya  
President

*APPROVED AS TO FORM:*

DENNIS J. HERRERA  
City Attorney

  
9/11/2020  
Katharine Hobin Porter  
Chief Labor Attorney

**Non-Waiver**

The City agrees that the POA's proposal and all related communications and offers are not waivers of the SFPOA's rights set forth in the current MOU and shall not be considered a contract reopener generally or of any specific term of the MOU. This proposal is an attempt to collaborate with the City on pending and projected COVID related budget deficits. Absent a written agreement with the SFPOA, the Parties shall comply with all terms and conditions of the current MOU.



**OFFICE OF THE CONTROLLER**  
**CITY AND COUNTY OF SAN FRANCISCO**

Ben Rosenfield  
Controller

Todd Rydstrom  
Deputy Controller

October 28, 2020

Ms. Angela Calvillo  
Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: File Numbers 201045 - 201053: Amendments to Memoranda of Understanding (MOU) between the City and County of San Francisco and various Unions representing City bargaining units

Dear Ms. Calvillo,

In accordance with Ordinance 92-94, I submit a cost analysis of nine MOU amendments between the City and County of San Francisco and various Unions representing employee bargaining units. The MOUs for the four safety unions (San Francisco Fire Fighters Local 798, Units 1 and 2; Police Officers Association; Municipal Executives Association – Fire; and Municipal Executives Association – Police), originally set to expire on June 30, 2021, have been extended for two years until June 30, 2023. The period covered by the other affected MOUs are unchanged by these amendments.

The MOU amendments affect approximately 6,000 authorized positions with an overall salary and benefits base of approximately \$1.1 billion. Our analysis finds that the MOUs will result in decreased costs to the City of \$12.3 million (or 1.1%) in FY 2020-21, \$6.2 million (or 0.6%) in FY 2021-22, and increased costs to the City of \$35.8 million (or 3.3%) in FY 2022-23. Approximately 90% of the savings in FY 2020-21 and FY 2021-22 supports the General Fund and 90% of the cost in FY 2022-23 is supported by the General Fund.

Our cost estimates assume that premiums, overtime, and other adjustments grow consistently with wage changes. Some wage and premium increases in FY 2021-22 and FY 2022-23 could be delayed if the Joint Report projects a budget deficit greater than \$200 million. These cost estimates assume that those increases will take place as scheduled. If the increases are delayed, the estimated cost would be reduced approximately \$11.6 million and \$11.8 million in FY 2021-22 and FY 2022-23, respectively.

See Attachments A and B for a detailed listing and analysis of costs for the affected MOUs.

If you have additional questions or concerns, please contact me at 554-7500 or Carol Lu of my staff at 554-7647.

Sincerely,

/S/ \_\_\_\_\_

Ben Rosenfield  
Controller

cc: Carol Isen, ERD  
Harvey Rose, Budget Analyst

## Attachment A

### Combined Costs for All MOUs and Amendments

	FY 2020-21	FY 2021-22	FY 2022-23
Wages	\$ (7,825,000)	\$ 31,000	\$ 29,363,000
Wage-Related Fringe Benefits	(1,636,000)	(275,000)	6,036,000
Premiums	(3,310,000)	(6,596,000)	0
Other Benefits	454,000	619,000	445,000
<b>MOU Total</b>	<b>\$ (12,317,000)</b>	<b>\$ (6,221,000)</b>	<b>\$ 35,844,000</b>
<i>% of Wage and Benefits Base</i>	<i>-1.1%</i>	<i>-0.6%</i>	<i>3.3%</i>

### Union Detail

#### File Number Union

	<b>San Francisco Fire Fighters Local 798, Unit 1 and Unit 2</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
201045-	Wage Deferrals	\$ (4,071,000)	\$ (7,989,000)	\$ (5,326,000)
201046	Wage Deferral Related Fringe Benefits	(819,000)	(1,607,000)	(1,072,000)
	Wage Increases	0	7,989,000	16,217,000
	Wage Increase Related Fringe Benefits	0	1,607,000	3,263,000
	Retirement Restoration	28,000	174,000	159,000
	<b>Union Total</b>	<b>\$ (4,862,000)</b>	<b>\$ 174,000</b>	<b>\$ 13,241,000</b>
	<i>% of Wage and Benefits Base</i>	<i>-1.5%</i>	<i>0.1%</i>	<i>4.1%</i>
201047	<b>Municipal Executives Association</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	
	Grievance Procedures	\$ 0	\$ 0	
	<b>Union Total</b>	<b>\$ 0</b>	<b>\$ 0</b>	
	<i>% of Wage and Benefits Base</i>	<i>N/A</i>	<i>N/A</i>	



201048	<b>Municipal Executives Association - Fire</b>	FY 2020-21	FY 2021-22	FY 2022-23
	Wage Deferrals	\$ (32,000)	\$ (64,000)	\$ (42,000)
	Wage Deferral Related Fringe Benefits	(7,000)	(13,000)	(9,000)
	Wage Increases	0	64,000	129,000
	Wage Increase Related Fringe Benefits	0	13,000	27,000
	Retirement Restoration	2,000	15,000	14,000
	<b>Union Total \$</b>	<b>(37,000)</b>	<b>\$ 15,000</b>	<b>\$ 119,000</b>
	<i>% of Wage and Benefits Base</i>	<i>-1.4%</i>	<i>0.6%</i>	<i>4.6%</i>
201049	<b>Municipal Executives Association - Police</b>	FY 2020-21	FY 2021-22	FY 2022-23
	Wage Deferrals	\$ (44,000)	\$ (130,000)	\$ (44,000)
	Wage Deferral Related Fringe Benefits	(10,000)	(28,000)	(10,000)
	Wage Increases	0	129,000	262,000
	Wage Increase Related Fringe Benefits	0	28,000	57,000
	Retirement Restoration	4,000	27,000	17,000
	Retention Pay	(206,000)	(387,000)	
	<b>Union Total \$</b>	<b>(256,000)</b>	<b>\$ (361,000)</b>	<b>\$ 282,000</b>
	<i>% of Wage and Benefits Base</i>	<i>-4.9%</i>	<i>-6.9%</i>	<i>5.4%</i>
201050	<b>Police Officers Association</b>	FY 2020-21	FY 2021-22	FY 2022-23
	Wage Deferrals	\$ (3,652,000)	\$ (10,822,000)	\$ (3,655,000)
	Wage Deferral Related Fringe Benefits	(760,000)	(2,511,000)	(760,000)
	Wage Increases	0	10,750,000	21,822,000
	Wage Increase Related Fringe Benefits	0	2,236,000	4,540,000
	Retirement Restoration	60,000	403,000	255,000
	Retention Pay	(3,104,000)	(6,209,000)	0
	Grievance Settlement	360,000	0	0
	<b>Union Total \$</b>	<b>(7,096,000)</b>	<b>\$ (6,153,000)</b>	<b>\$ 22,202,000</b>
	<i>% of Wage and Benefits Base</i>	<i>-1.6%</i>	<i>-1.4%</i>	<i>5.1%</i>

201051	<b>Service Employees International Union, Local 1021</b>	FY 2020-21	FY 2021-22
	Work Study Provisions	0	0
	<b>Union Total \$</b>	<b>0</b>	<b>\$ 0</b>
	<i>% of Wage and Benefits Base</i>	<i>N/A</i>	<i>N/A</i>
201052	<b>Service Employees International Union Local 1021: Staff and Per Diem Nurses</b>	FY 2020-21	FY 2021-22
	Overtime Changes	\$ 50,000	\$ 104,000
	<b>Union Total \$</b>	<b>50,000</b>	<b>\$ 104,000</b>
	<i>% of Wage and Benefits Base</i>	<i>0.0%</i>	<i>0.0%</i>
201053	<b>Unrepresented Employees</b>	FY 2020-21	
	Wage Deferrals	\$ (76,000)	
	Wage Deferral Related Fringe Benefits	(40,000)	
	Retirement Restoration	0	
	<b>Union Total \$</b>	<b>(116,000)</b>	
	<i>% of Wage and Benefits Base</i>	<i>-1.7%</i>	

## **Attachment B**

In accordance with Ordinance 92-94, the Office of the Controller conducted a cost analysis of nine MOU amendments between the City and County of San Francisco and various Unions representing employee bargaining units. The attached analysis reviews the MOU amendments listed below:

201045 – San Francisco Fire Fighters Local 798, Unit 1  
201046 – San Francisco Fire Fighters Local 798, Unit 2  
201047 – Municipal Executives Association  
201048 – Municipal Executives Association – Fire  
201049 – Municipal Executives Association – Police  
201050 – Police Officers Association  
201051 – Service Employees International Union, Local 1021  
201052 – Service Employees International Union Local 1021: Staff and Per Diem Nurses  
201053 – Unrepresented Employees

The MOU amendments affect approximately 6,000 authorized positions with an overall salary and benefits base of approximately \$1.1 billion. Our analysis finds that the MOUs will result in decreased costs to the City of \$12.3 million (or 1.1%) in FY 2020-21, \$6.2 million (or 0.6%) in FY 2021-22, and increased costs to the City of \$35.8 million (or 3.3%) in FY 2022-23. Approximately 90% of the savings in FY 2020-21 and FY 2021-22 supports the General Fund and 90% of the cost in FY 2022-23 is supported by the General Fund.

Our cost estimates assume that premiums, overtime, and other adjustments grow consistently with wage changes. Some wage and premium increases in FY 2021-22 and FY 2022-23 could be delayed if the Joint Report projects a budget deficit greater than \$200 million. These cost estimates assume that those increases will take place as scheduled. If the increases are delayed, the estimated cost would be reduced approximately \$11.6 million and \$11.8 million in FY 2021-22 and FY 2022-23, respectively.

Details of the files are discussed in more detail below:

### **File Numbers 201045 and 201046 – San Francisco Fire Fighters Local 798, Units 1 and 2**

The MOU is extended for two years and will now expire on June 30, 2023. The 3.0% general wage increase scheduled for December 26, 2020 is split and deferred as follows: 1.0% deferred until the close of business on June 30, 2022 and 2.0% deferred until the close of business on June 30, 2023. There are two new general wage increases: A 3.0% increase due on July 1, 2021 and a 3.0% increase due on July 1, 2022. Both increases could be delayed approximately six months if the Joint Report finds a budget deficit exceeding \$200 million.

Employees who retire between December 26, 2020 and June 30, 2024 are entitled to up to 12 months of pensionable backpay to restore the deferred wage increases.

#### **201047 – Municipal Executives Association**

The grievance procedures are amended and expedited arbitration will be required in certain circumstances. There is no estimable cost related to these changes.

#### **201048 – Municipal Executives Association – Fire**

The MOU is extended for two years and will now expire on June 30, 2023. The 3.0% general wage increase scheduled for December 26, 2020 is split and deferred as follows: 1.0% deferred until the close of business on June 30, 2022 and 2.0% deferred until the close of business on June 30, 2023. There are two new general wage increases: A 3.0% increase due on July 1, 2021 and a 3.0% increase due on July 1, 2022. Both increases could be delayed approximately six months if the Joint Report finds a budget deficit exceeding \$200 million.

Employees who retire between December 26, 2020 and June 30, 2024 are entitled to up to 12 months of pensionable backpay to restore the deferred wage increases.

#### **201049 – Municipal Executives Association – Police**

The MOU is extended for two years and will now expire on June 30, 2023. The 2.0% wage increase due on December 26, 2020 is deferred until the close of business on June 30, 2022. The 1.0% wage increase due on June 30, 2021 at the close of business is deferred until the close of business on June 30, 2023. There are two new general wage increases: A 3.0% increase due on July 1, 2021 and a 3.0% increase due on July 1, 2022. Both increases could be delayed approximately six months if the Joint Report finds a budget deficit exceeding \$200 million.

The restructuring and increases to retention pay that were due on December 26, 2020 are deferred until the close of business on June 30, 2022. In addition, the requirement to work 1,700 hours to be eligible for retention pay is eliminated.

Employees who retire between December 26, 2020 and June 30, 2024 are entitled to up to 12 months of pensionable backpay to restore the deferred wage increases and the delayed changes to retention pay.

#### **201050 – Police Officers Association**

The MOU is extended for two years and will now expire on June 30, 2023. The 2.0% wage increase due on December 26, 2020 is deferred until the close of business on June 30, 2022. The 1.0% wage increase due on June 30, 2021 at the close of business is deferred until the close of business on June 30, 2023. There are two new general wage increases: A 3.0% increase due on July 1, 2021 and a 3.0% increase due on July 1, 2022. Both increases could be delayed approximately six months if the Joint Report finds a budget deficit exceeding \$200 million.

The restructuring and increases to retention pay that were due on December 26, 2020 are deferred until the close of business on June 30, 2022. In addition, the requirement to work 1,700 hours to be eligible for retention pay is eliminated.

Employees who retire between December 26, 2020 and June 30, 2024 are entitled to up to 12 months of pensionable backpay to restore the deferred wage increases and the delayed changes to retention pay.

As part of the MOU amendment, the City and SFPOA agreed to resolve two grievances related to the retention pay benefit.

#### **201051 – Service Employees International Union, Local 1021**

The MOU revises the work study program, but the maximum cost to the City is unchanged.

#### **201052 – Service Employees International Union Local 1021: Staff and Per Diem Nurses**

Registered nurses (job class 2320) working non-standard schedules (e.g., part-time, 12-hour shifts) will receive overtime pay for any hours in excess of 12 in a shift. Additionally, registered nurses who are required to work through their lunch breaks will receive overtime pay for that time.

#### **201053 – Unrepresented Employees**

Mayoral classifications 0885 – 0905 will not receive general wage increases in FY 2020-21.

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM: John Carroll, Assistant Clerk, GAO Committee, Board of Supervisors

DATE: September 23, 2020

SUBJECT: LEGISLATION INTRODUCED - Cost Analysis, Memoranda of Understanding – September 2020

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Mayor Breed on September 15, 2020:

These matters are pending committee action; I'm forwarding them to you for a cost analysis.

Please forward your analysis to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

File No. 201045 [Memorandum of Understanding - San Francisco Fire Fighters Local 798, Unit 1]

**Ordinance adopting and implementing the Second Amendment to the 2018-2021 Memorandum of Understanding between the City and County of San Francisco and the San Francisco Fire Fighters Association Local 798, Unit 1, to defer wage increases currently set for Fiscal Year 2020-2021, extend the term by two years, and set wages for the additional term.**

File No. 201046 [Memorandum of Understanding - San Francisco Fire Fighters Local 798, Unit 2]

**Ordinance adopting and implementing the Third Amendment to the 2018-2021 Memorandum of Understanding between the City and County of San Francisco and the San Francisco Fire Fighters Association Local 798, Unit 2, to defer wage increases currently set for Fiscal Year 2020-2021, extend the term by two years, and set wages for the additional term.**

File No. 201047 [Memorandum of Understanding - Municipal Executives Association]

**Ordinance adopting and implementing the First Amendment to the 2019-2022 Memorandum of Understanding between the City and County of San Francisco and the Municipal Executives Association, to update the grievance procedures.**

File No. 201048 Memorandum of Understanding - Municipal Executives Association - Fire]

**Ordinance adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and County of San Francisco and the Municipal Executives Association - Fire, to defer wage increases currently set for Fiscal Year 2020-2021, extend the term by two years, and set wages for the additional term.**

File No. 201049 [Memorandum of Understanding - Municipal Executives Association - Police]

**Ordinance adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and County of San Francisco and the Municipal Executives Association - Police, to defer wage increases currently set for Fiscal Year 2020-2021, amend the retention premium provisions, extend the term by two years, and set wages for the additional term.**

File No. 201050 [Memorandum of Understanding and Settlement of Grievances - Police Officers Association]

**Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association ("POA"), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for Fiscal Year 2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed amount of \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.**

File No. 201051 [Memorandum of Understanding - Service Employees International Union, Local 1021]

**Ordinance adopting and implementing the Second Amendment to the 2019-2022 Memorandum of Understanding between the City and County of San Francisco and Service Employees International Union, Local 1021 (Miscellaneous) to update the work study provisions.**

File No. 201052 [Memorandum of Understanding - Service Employees International Union Local 1021: Staff & Per Diem Nurses]

**Ordinance adopting and implementing the First Amendment to the 2019-2022 Memorandum of Understanding between the City and County of San Francisco and the Service Employees International Union, Local 1021: Staff & Per Diem Nurses, to make administrative amendments to the overtime provisions.**

File No. 201053 [Compensation for Unrepresented Employees]

**Ordinance amending Ordinance No. 106-20 fixing compensation for persons employed by the City and County of San Francisco whose compensation is subject to the provisions of Section A8.409 of the Charter, in job codes not represented by an employee organization, and establishing working schedules and other terms and conditions of employment and methods of payment effective July 1, 2020.**

c: Todd Rydstrom, Office of the Controller  
Michelle Allersma, Office of the Controller  
Carol Lu, Office of the Controller





September 15, 2020

TO: Angela Calvillo, Clerk of the Board  
Board of Supervisors

FROM: Carol Isen, Employee Relations Director  
Department of Human Resources

RE: **MOU Amendments and Unrepresented Employees Ordinance**

### **Background**

Due to the unexpected deterioration of the City's financial condition resulting from the COVID-19 pandemic, the Mayor asked all labor organizations representing City employees to consider deferring negotiated wage increases due in FY 2020-21 and FY 2021-22. Labor organizations representing sworn members of the Fire and Police departments agreed to engage in discussions with the Mayor's office, resulting in tentative agreements as described in this transmittal memo. The total savings to the General Fund for FY 2020-21 is \$12 million, FY 2021-22 is \$29 million and FY 2022-23 is \$11 million. The remainder of the City's labor organizations declined to engage in discussions. Other MOU amendments, unrelated to wage deferrals, are also included in the transmittal memo.

### **Enclosed are eight (8) MOU Amendments and one (1) Unrepresented Employees Ordinance Amendment**

1. Second Amendment to the Fire Fighters' Local 798, Unit 1, MOU (July 1, 2018 through June 30, 2021)
2. Third Amendment to the Fire Fighters' Local 798, Unit 2, MOU (July 1, 2018 through June 30, 2021)
3. First Amendment to the Municipal Executives' Association - Fire, MOU (July 1, 2018 through June 30, 2021)
4. First Amendment to the San Francisco Police Officers' Association MOU (July 1, 2018 through June 30, 2021), part of a Tentative Agreement with the SFPOA that also includes settlement of two pending grievances
5. First Amendment to the Municipal Executives' Association - Police, MOU (July 1, 2018 through June 30, 2021)
6. Amendment to the Unrepresented Employees Ordinance
7. First Amendment to the Municipal Executives' Association, Misc., MOU (July 1, 2019 through June 30, 2022)
8. First Amendment to the Service Employees International Union, Local 1021, Staff and Per Diem Nurses, MOU (July 1, 2019 through June 30, 2022)
9. Second Amendment to the Service Employees International Union, Local 1021, Misc., MOU (July 1, 2019 through June 30, 2022)

Please find enclosed for each MOU Amendment:

- 1 signed MOU Amendment
- 1 signed TENTATIVE AGREEMENT (SFPOA only)
- 1 signed ORDINANCE on redline paper
- 1 redline MOU
- 1 clean MOU

Please find enclosed for the Unrepresented Employees Ordinance Amendment:

- 1 Signed ORDINANCE on redline paper
- 1 Legislative Digest

## Summary of Changes

### 1. Fire Fighters' Local 798, Unit 1, MOU Amendment No. 2

- **Wages**
  - 3.00% General Wage increase due on December 26, 2020, split and deferred as follows:
    - 1.00% deferred until COB June 30, 2022.
    - 2.00% deferred until COB June 30, 2023.
  - New 3.00% General Wage Increase due on July 1, 2021 with possible six-month deferral based on the Joint Report.
  - New 3.00% General Wage Increase due on July 1, 2022 with possible six-month deferral based on the Joint Report.
- **Retirement Restoration** – Retiring employees will be eligible for up to 12 months of restoration back pay for the 1.00% general wage increase deferred from December 26, 2020 through COB June 30, 2022 and the 2% general wage increase deferred from December 26, 2020 through COB June 30, 2023. The intention of the Retirement Restoration program is to make whole those employees who retire during the deferral period so their pensions are not adversely affected by the deferral.
- **Term** – MOU extended two years to now expire on June 30, 2023.

### 2. Fire Fighters' Local 798, Unit 2, MOU Amendment No. 3

- **Wages**
  - 3.00% General Wage increase due on December 26, 2020, split and deferred as follows:
    - 1.00% deferred until COB June 30, 2022.
    - 2.00% deferred until COB June 30, 2023.
  - New 3.00% General Wage Increase due on July 1, 2021 with possible six-month deferral based on the Joint Report.
  - New 3.00% General Wage Increase due on July 1, 2022 with possible six-month deferral based on the Joint Report.
- **Retirement Restoration** – Retiring employees will be eligible for up to 12 months of restoration back pay for the 1.00% general wage increase deferred from December 26, 2020 through COB June 30, 2022 and the 2% general wage increase deferred from December 26, 2020 through COB June 30, 2023. The intention of the Retirement Restoration program is to make whole those employees who retire during the deferral period so their pensions are not adversely affected by the deferral.
- **Term** – MOU extended two years to now expire on June 30, 2023.

### 3. Municipal Executives' Association, Fire, MOU Amendment No. 1

- **Wages**
  - 3.00% General Wage increase due on December 26, 2020, split and deferred as follows:
    - 1.00% deferred until COB June 30, 2022.
    - 2.00% deferred until COB June 30, 2023.
  - New 3.00% General Wage Increase due on July 1, 2021 with possible six-month deferral based on the Joint Report.
  - New 3.00% General Wage Increase due on July 1, 2022 with possible six-month deferral based on the Joint Report.
- **Retirement Restoration** – Retiring employees will be eligible for up to 12 months of restoration back pay for the 1.00% general wage increase deferred from December 26, 2020 through COB June 30, 2022 and the 2.00% general wage increase deferred from December 26, 2020 through COB June 30, 2023. The intention of the Retirement Restoration program is to make whole those employees who retire during the deferral period so their pensions are not adversely affected by the deferral.
- **Term** – MOU extended two years to now expire on June 30, 2023.

### 4. San Francisco Police Officers' Association Tentative Agreement

#### A. MOU, Amendment No. 1

- **Wages**
  - 2.00% General Wage Increase due on December 26, 2020 deferred until COB June 30, 2022.
  - 1.00% General Wage Increase due on COB June 30, 2021 deferred until COB June 30, 2023.
  - New 3.00% General Wage Increase due on July 1, 2021 with possible six-month deferral based on the Joint Report.
  - New 3.00% General Wage Increase due on July 1, 2022 with possible six-month deferral based on the Joint Report.
- **Retention Pay**
  - Retention pay restructuring and increases due on December 26, 2020 deferred until COB June 30, 2022.
  - Eliminate 1,700 hours worked (WKP) eligibility requirement for retention pay.
- **Retirement Restoration** – Employees retiring between December 26, 2020 and June 30, 2024 will be eligible for up to 12 months of restoration back pay for the 2.00% general wage increase due on December 26, 2020, the 1.00% general wage increase due on COB June 30, 2020, and the retention pay increases due on December 26, 2020. The intention of the Retirement Restoration program is to make whole those employees who retire during the deferral period so their pensions are not adversely affected by the deferral.
- **Term** – MOU extended two years to expire on June 30, 2023.

- **10B Overtime** – Employees are ineligible to work 10B overtime assignments:
  - During hours in which an employee is regularly scheduled to work; or
  - If the employee took more than twenty hours of paid sick leave in last three months as reviewed on a quarterly basis (excluding sick leave for birth/adoption of a child or death of a close family member).

## **B. Grievances Settlement**

The City and SFPOA agreed, as part of the overall tentative agreement, to enter a settlement agreement to resolve two grievances related to the retention premium pay benefit under the MOU. Under the agreement, the City will provide back pay to Police Officers who claimed they were wrongfully denied retention pay premiums in an amount not to exceed \$359,613.87. This amount is based on known back pay for the period July 1, 2018 through June 30, 2020 in the amount of \$134,613.87, and estimated back pay through implementation of the amended MOU retention pay provision (estimated at October 30, 2020) not to exceed \$225,000. The City will also waive its claims for overpayment of retention pay benefits.

## **5. Municipal Executives' Association, Police, MOU Amendment No. 1**

- **Wages**
  - 2.00% General Wage Increase due on December 26, 2020 deferred until COB June 30, 2022.
  - 1.00% General Wage Increase due on January 1, 2021 deferred until COB June 30, 2023.
  - New 3.00% General Wage Increase due on July 1, 2021 with possible six-month deferral based on the Joint Report.
  - New 3.00% General Wage Increase due on July 1, 2022 with possible six-month deferral based on the Joint Report.
- **Retention Pay**
  - Retention pay restructuring and increases due on December 26, 2020 deferred until COB June 30, 2022.
  - Eliminate 1,700 hours worked (WKP) eligibility requirement for retention pay.
- **Retirement Restoration** – Employees retiring between December 26, 2020 and June 30, 2024 will be eligible for up to 12 months of restoration back pay for the 2.00% general wage increase due on December 26, 2020, the 1.00% general wage increase due on COB June 30, 2021, and the retention pay increases due on December 26, 2020. The intention of the Retirement Restoration program is to make whole those employees who retire during the deferral period so their pensions are not adversely affected by the deferral.
- **Term** – MOU extended two years to expire on June 30, 2023.

## **6. Amendment to the Unrepresented Employees Ordinance**

- **Wages** – Mayoral Classifications 0885 – 0905 shall not receive general wage increases in FY20-21

**7. Municipal Executives' Association, Misc. MOU Amendment No. 1**

- **Grievance Procedures** – The Association will be able grieve discipline for permanent civil service employees who have passed probation. Currently, the Association may only appeal discipline through a hearing process set out in San Francisco Charter Sections A8.341 and A8.342.
- **Expedited Arbitration** – Expedited arbitration will be required for suspensions of 10 days or less. Each expedited arbitration hearing for five days suspension or less will last a maximum of two hours. Each expedited arbitration hearing for six through ten days suspension will last a maximum of four hours.
- **Arbitrators** – Amends list of arbitrators in Appendix B.

**8. Service Employees International Union, Local 1021, Staff and Per Diem Nurses, Amendment No. 1**

- **Overtime** - For employees working any other work schedules (e.g., part-time, 12 hour shifts), any time worked under proper authorization of the appointing officer by a nurse in excess of twelve (12) hours in a day or eighty (80) hours per payroll period shall be compensated at one-and-one-half (1-1/2) the base hourly rate which shall include shift differential if applicable.
- For informational purposes only, effective July 1, 2020, the Department of Human Resources administratively changed the status of classification 2830 Public Health Nurse from “Z” to “N.”

**9. Service Employees International Union, Local 1021, Misc., Amendment No. 2**

- **Work Training Program** – Employees in permanent civil service appointment may be approved with pay to attend accredited educational institutions for up to eight (8) hours in any one (1) week, to attend classes during regular working hours. Participants in the Work Training Program must attend an accredited educational institution approved by the Human Resources Director. Employees approved to participate may enroll in classes through the program for up to two (2) years. Effective July 1, 2021, the City shall transfer \$258,143 to the Union’s Work Training Program fund; this amount represents the balance remaining on June 30, 2019. Thereafter, the cost to the City of the Work Training Program shall not exceed \$200,000 per fiscal year. With the exception of the one-time balance transfer of unused Work Training Program funds on July 1, 2021, unused funds shall not be carried forward from fiscal year to fiscal year.

Thank you.

Enclosures

Angela Calvillo  
September 15, 2020  
Page 6 of 6

cc: Ben Rosenfield, Controller  
Micki Callahan, Human Resources Director  
Kelly Kirkpatrick, Mayor's Budget Director  
Sophia Kittler, Mayor's Liaison to the Board of Supervisors  
Members, Government, Audit and Oversight Committee  
John Carroll, Assistant Clerk, Board of Supervisors  
Brent Jalipa, Legislative Clerk, Board of Supervisors  
Katharine Hobin Porter, Chief Labor Attorney, City Attorney's Office  
File

**From:** [Calvin Quick \(SFYC\)](#)  
**To:** [Carroll, John \(BOS\)](#)  
**Subject:** POA MOU Renegotiation - YC Testimony  
**Date:** Thursday, November 5, 2020 2:56:49 PM  
**Attachments:** [YC Letter Opposing the POA Contract.pdf](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Mr Carroll,

I believe my connection cut out while I was giving public comment on the POA contract today-- for the record, the attached letter is a reflection of the Youth Commissions comments on File No. 201050.

Best,

-Calvin

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**Calvin Quick** | *he/him/his*  
Youth Commissioner, District 5  
Legislative Affairs Officer (LAO)  
San Francisco Youth Commission  
[calvin@quickstonian.com](mailto:calvin@quickstonian.com) | 1(415) 521-9126  
<https://sfgov.org/youthcommission/>

November 3, 2020

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, Ca. 94102-4689

**RE: Youth Commission Opposes Approval of the City's Renegotiated Memorandum of Understanding with the Police Officers' Association**

Dear Supervisors,

The Youth Commission opposes approval of the City's renegotiated Memorandum of Understanding (MOU) with the Police Officers' Association (POA), contained in File No. 201050 and scheduled to be heard at the Board of Supervisors' Government Audit and Oversight (GAO) Committee this Thursday, November 5, 2020.

The Youth Commission has a long history of supporting transformative justice and divestment from policing as a means of public safety, most recently urging the City to cut the San Francisco Police Department (SFPD) budget by 50% in fiscal years 2020-21 and 2021-22 and reinvest in community programs, particularly in Black and Brown communities most impacted by police violence. Beyond this, the Youth Commission has participated in community-led initiatives to close the seismically unsafe and unhygienic County Jail #4 and Youth Guidance Center (also known as Juvenile Hall), as well as urging more transparency and accountability in police use of force. We find that allowing this MOU to pass is fundamentally in conflict with our values: values of community, respect, and justice for all.

Following a presentation from community partners, the Youth Commission voted unanimously on November 2, 2020 to oppose this renegotiated MOU with the POA. In doing so, the Youth Commission recognizes the following:

- 1) The City only cut the SFPD budget this last budget season by approximately 6%, despite historic protests against policing and almost continuous public input, including via the Youth Commission, in favor of more substantial cuts, including staffing cuts. The POA's MOU with the City was cited as a reason for not cutting the SFPD budget further.
- 2) The current MOU is set to expire in 2021, which would allow for an open, transparent, and community-led process to guide contract negotiations with the POA, in alignment with a growing nationwide and local movement for transparency in how policing policy and contracts are set. However, the renegotiated MOU does not expire until 2023, a mayoral election year when the POA could have undue political influence over contract negotiations. This contract extension also locks in existing regressive and problematic processes limiting the City's ability to implement harm-reduction reforms (see the Bar Association of San Francisco's [letter](#)).
- 3) The renegotiated MOU also gives police an additional 6% in raises over the contract period and adds a parity clause giving the police further raises if more than 50% of City workers receive independent raises. This is ridiculous given that the police are already some of the highest paid public employees in San Francisco, with entry-level officers



November 3, 2020

being paid approximately \$30,000 more per year than the average first-year teacher. At a time when City officials are raising the prospect of lay-offs due to the current economic crisis related to the Covid-19 pandemic, this MOU amendment unnecessarily burdens the City's budget in upcoming fiscal years.

- 4) Finally, this MOU amendment was negotiated behind closed doors, without any public input, in flagrant disregard to public interest in ensuring justice for victims of police violence.

All around, this renegotiated MOU does not align, nor did it attempt to align, with the demands of the Youth Commission and many community organizations that contract negotiations happen in public, and that the City stand up to the POA's bully tactics and actually push for meaningful changes to the MOU's structure, especially around how the City's conducts meet and confer negotiations with the POA.

Just as the role of the Youth Commission is not to simply rubber-stamp the Board of Supervisors' legislative proposals, but to represent and advocate for the interests of San Francisco's youth, so it is incumbent on the Board of Supervisors to not simply rubber-stamp this bad contract, but to act in the interests of its constituents, particularly those from Black and Brown communities targeted by police violence. The Youth Commission therefore urges the Board to reject the City's renegotiated MOU with the POA, and to engage in transparent and accessible community input processes to determine the City's demands in all future negotiations with the POA.

Sincerely,

Nora Hylton, Youth Commission Chair

Calvin Quick, Youth Commission Legislative Affairs Officer

**From:** [Mishwa Lee](#)  
**To:** [Carroll, John \(BOS\)](#)  
**Subject:** Divert funding from SF Police.  
**Date:** Thursday, November 5, 2020 2:00:59 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

The Government Accountability Commission & the Board of Supervisors have a great opportunity to address underfunded community mental health needs & provide resources to community programs to serve the needs of people of color & low or no income people who are unable to access options during mental health crisis.

This is not the time to sign a contract with the SFPOA that would raise police officers salaries thru 2023, with no accountability. I am concerned too that Mayor Breed negotiated this contract behind closed doors. Transfer funding from police to solid community based organizations that can better address the mental & physical health needs of our most vulnerable residents.

Thank you for your consideration of this important matter.

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Carroll, John \(BOS\)](#)  
**Subject:** FW: Reject Police Union Contract Proposal  
**Date:** Thursday, November 5, 2020 10:41:06 AM

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**From:** Kylie Svenson <kyliesvensontherapy@gmail.com>

**Sent:** Thursday, November 5, 2020 10:31 AM

**To:** Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative\_aides@sfgov.org>

**Subject:** Reject Police Union Contract Proposal

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi my name is Kylie Svenson and I am a voter and engaged citizen living and working in San Francisco.

I am writing to demand public safety for all.

In the near term, this means that you MUST reject the contract agreement with the San Francisco Police Officers Association. Such an agreement only leads to further lack of police accountability by giving officers future pay raises without any compromises on police reform and without the negotiating power that the police union has used to hold up reform policies at the Police Commission. This poses a profound and continuing threat to public safety and especially to the safety of communities of color. Police officers have consistently and continuously demonstrated that they are unable to hold themselves accountable and can and will cross boundaries and cause harm if allowed to do so.

Nor should they be expected to hold themselves accountable - in no other governmental body would an organization be expected to - forgive the expression - police itself. This is an unfair and unreasonable expectation and we should EXPECT those so burdened to fail at this task.

Further, to defend our community's safety, we must defund SFPD in this year's budget cycle and redirect those funds to investments which make us ALL safe, including public health, housing, reparations for communities most targeted by policing and imprisonment such as Black, Indigenous, and People of Color, trans communities, and our unhoused neighbors.

Let me reiterate -- we demand that you vote to reject any budget that does not fire 200 officers THIS BUDGET CYCLE. You can still do this by introducing budget amendments to the budget that came out of the Budget and Appropriations Committee.

Those who tell us to wait are telling our most marginalized communities that their lives do not matter. That brutalization, suffering, and oppression does not deserve an urgent response. That equity and justice is not a right, but a privilege.

Police don't keep us safe. Police are crisis intervention, not preventative care, and preventative care are what keep communities safe and healthy. Do you support police officers? Great. Stop asking them to do the impossible job of being social worker, mental health clinician, community builder, and so much more; we are doing triage when we should be practicing preventative medicine so that the small (and completely reformed system and number) of police that remains can do the actual job that they are there to do: emergency medicine.

No police officer should have to respond to a call of a person in suicidal distress; they are not trained for this, and no amount of weekend retreat trainings will truly properly train them for this. But even deeper than this, no officer can address the issue that may have made the person suicidal in the first place: lack of resources to connect them to job training and work; lack of spaces to build healthy community; lack of physical and mental health care; lack of affordable and appropriate housing; lack of case managers to help them access these resources. And no police officer should want to be in the position of having to incarcerate someone for a petty crime committed out of desperation because a person lacks these resources.

American policing began with slave patrols. Modern day policing was a response to the rise of labor unions. Today, approximately 99% of SFPD calls for service are in response to non-violent issues. Most calls are related to public health, unhoused people, traffic/parking, and noise complaints.

Worse than that, police harm our communities.

When the police talk about "public safety", they're speaking in code. The word "public" is not referring to marginalized communities. It's not referring to Alex Nieto, Mario Woods, Jessica Williams, or Luis Góngora Pat. It's referring to the people the system of policing was designed for. The slave owner. The union buster. The wealthy homeowner.

This is reflected not just in the lived experiences of BIPOC, trans people, and unhoused people. It's also reflected in the numbers.

- Black San Franciscans make up only 5% of the city's population, but account for 40% of police searches, 54% of our jail population, and 40% of people killed by police.

- In the fourth quarter of 2019, 76% of all uses of force by SFPD were against people of color.

- In 2019, SFPD officers pointed a gun at San Franciscans an average of 2.4 times PER DAY. Only 14 of

the 868 incidents were in defense of self or others.

- After 4 years of DOJ mandated reforms, non-gun related SFPD uses of force have only decreased from 1,142 to 1,110.

Policing can't be reformed because it's working as intended.

SFPD is a violent, racist, and explicitly anti-Black institution. Cal DOJ and the SFPD's implicit bias trainer recently described the level of anti-Black bias in SFPD as "extreme." This presents a clear and imminent danger to our most marginalized communities. The first step towards public safety for all is disbanding SFPD and eliminating that danger.

Defunding SFPD is an act of harm reduction. It is just one step on the way towards achieving public safety for all. We can't be safe until EVERYONE has access to fundamental human rights -- housing, food, education, healthcare, opportunity.

DefundSFPDNow, a multi-racial campaign in San Francisco, has identified at least \$295 million in SFPD line item budget cuts as a step towards reducing the threat to public safety and reinvesting in solutions that begin building public safety.

What can you do as my elected official? Defund SFPD, reinvest in our communities, and reimagine the path to public safety that uplifts ALL San Franciscans by

Refusing to pass any budget that does not fire 200 officers or Sheriff's deputies

Leveraging the rights of Supervisors to amend the BUDGET that came out of Budget and Appropriations this cycle

Ensuring that more than \$120 million of budget cuts are reinvested back into predominantly Black communities

Ensuring that the city closes all jails in the Hall of Justice building and ends the use of holding cells there for all purposes, including short term or overnight stays.

We are not asking for chaos.

Chaos is responding to someone experiencing a mental health crisis with a gun and combat training instead of care and services.

Chaos is stopping a Black driver for a broken tail light to threaten and harass them instead of offering to replace the light.

Chaos is spending \$23 million a year on police units that criminalize poverty instead of providing housing and opportunity.

We are not asking for chaos. We are asking that you be reasonable.

Defund SFPD, Defund Sheriffs, refund our communities, and reimagine the path to public safety.

You will find that you may not be voted back into office otherwise. We are watching you. We care.  
We demand change.

Thank you for your time,

Kylie Svenson

Home address:  
300 Channel St, #8  
San Francisco, CA 94158

Svenson Psychoanalytic Therapy

Kylie Svenson, MSW, ACSW  
Work address:  
3663 Sacramento St  
San Francisco, CA 94118  
(415) 938-8434  
pronouns: she/hers

Offering DBT, trauma-informed parts work, and psychoanalytic therapy in San Francisco  
[kyliesvensonpsychotherapy.com](http://kyliesvensonpsychotherapy.com)

**From:** [Calvillo, Angela \(BOS\)](#)  
**To:** [Citizens United](#)  
**Cc:** [Board of Supervisors \(BOS\)](#); [Cityattorney](#); [SAgarwal@aclunc.org](#); [Peskin, Aaron \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [asoltani@aclunc.org](#); [dsnyder@firstamendmentcoalition.org](#); [dwrizk@gmail.com](#); [Mar, Gordon \(BOS\)](#); [Carroll, John \(BOS\)](#); [Marstaff \(BOS\)](#); [Haney, Matt \(BOS\)](#); [organizing@aclunc.org](#); [SOTF \(BOS\)](#)  
**Subject:** FW: DRAFT EMAIL - Concerned Citizens  
**Date:** Thursday, November 5, 2020 9:59:14 AM  
**Attachments:** [Re URGENT Update Agenda for 1105 GAO meeting Violation of Admin Code 67.7.msg](#)  
[Re URGENT Update Agenda for 1105 GAO meeting Violation of Admin Code 67.7.msg](#)

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Hello Mylon and CCUSF members

I am in receipt of your attached emails with concerns regarding today's posted agenda for the Government Audit and Oversight Committee.

I understand there may be concerns regarding how the Police MOU and Settlement Ordinance (File No. 201050) was agendized since it was placed under information indicating a motion to convene in Closed Session on this matter *may* occur. The Closed Session information is listed to provide the GAO Committee the option to convene in Closed Session on confidential matters associated with this legislation, but any matter listed on a Committee agenda is required to have a hearing and public comment taken. The Closed Session information posted above this matter on the agenda indicates that a Closed Session is possible, but that would never negate the requirement to take public comment on an item being heard in Committee. And even if a matter is discussed in Closed Session, the matter is still called in open session and public comment taken. There is never an instance when public comment is not taken on every item on a Committee agenda.

If there are individuals who may be interested in educating themselves on what to expect in order to participate, we would be happy to discuss further with them. Members of the public are encouraged to virtually stop by and visit my staff and I during "virtual" office hours on Mondays (3:00-5:00 p.m.) or Fridays (1:00-3:00 p.m.) to ask questions or get informed. You can find the link to the latest office hours at the top of our front webpage ([www.sfbos.org](http://www.sfbos.org)).

Thank you for your interest and please let me know if I can be of further assistance.

Angela Calvillo  
Clerk of the Board

**From:** [Adrienne Fong](#)  
**To:** [Carroll, John \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Ronen, Hillary](#); [Stefani, Catherine \(BOS\)](#); [Yee, Norman \(BOS\)](#); [MandelmanStaff, JBOS](#); [Peskin, Aaron \(BOS\)](#); [Fewer, Sandra \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Walton, Shamann \(BOS\)](#)  
**Subject:** Nov. 5th, SF Government Audit & Oversight Cmte. meeting / SF BOS - re SFPOA Contract  
**Date:** Thursday, November 5, 2020 9:58:37 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**To:** All the San Francisco Board of Supervisors  
And  
The San Francisco Government Audit and Oversight Committee

**From:** Adrienne Fong (afong@jps.net)  
750 Presidio Ave., #207  
SF

**RE:** San Francisco Police Officers Association Contract

Am writing to you regarding item 13 on the agenda, out of concern of the SF Police Officers Associations Contract and the **LACK of TRANSPARENCY** between that organization, Mayor Breed's office, and the Department of Human Resources.

I ask that you look into how this contract came about and the deceit behind it and how this is not helping San Franciscans. The contract is contributing to San Franciscans mistrust of the Board of Supervisors and other SF governmental agencies.

- A hearing needs to be held regarding DHR's actions, the community needs to be involved in the process – not just a few chosen organizations and people.

- The mayor's office also needs to be held accountable to its role in these negotiations with the POA.

- The proposed POA perpetuates the racist, status quo. It gives SFPD two additional years of raises and offers no policy concessions to prevent officers from killing yet another person.

It also adds a parity clause, which gives the POA any additional benefits earned by the city workers that actually create public safety like nurses, teachers, and other essential workers. This

fuels the mis-trust of the SFPD – POA and SF governmental offices (which includes SF Supervisors)

- This past summer thousands of San Franciscans of all ages – especially young people took to the streets demanding that SFPD be DEFUNDED. The existing way the POA



has defended police officers who use 'excessive force' and have killed people in our communities – especially in Black and Brown communities is not promoting accountability  
not transparency and builds in more mistrust of the police.

All one has to do is stand in front of 850 Bryant St. (Hall of Justice) to hear some of the stories of people regarding SFPD's continued abuse.

This contract **Please REJECT this contract.** Thank you for your time.

Sincerely,  
Adrienne Fong

**From:** [Ciitzens United](#)  
**To:** [Board of Supervisors \(BOS\)](#); [Cityattorney](#); [SAgarwal@aclunc.org](#); [Peskin, Aaron \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [asoltani@aclunc.org](#); [dsnyder@firstamendmentcoalition.org](#); [dwrizk@gmail.com](#); [Mar. Gordon \(BOS\)](#); [Carroll, John \(BOS\)](#); [Marstaff \(BOS\)](#); [Haney, Matt \(BOS\)](#); [organizing@aclunc.org](#); [SOTF \(BOS\)](#)  
**Subject:** Re: URGENT: Update Agenda for 11/05 GAO meeting [Violation of Admin Code 67.7]  
**Date:** Thursday, November 5, 2020 8:22:52 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good morning,

I would like to bring your attention to the following description published last night in the SF Examiner:

“Mar said the discussion would be held in public despite the item appearing in the closed-session section of the agenda.”

At this point, we strongly encourage you to cancel the meeting as it is a clear and well-documented violation of the Brown act.

We would be open to a call to discuss as this would save us both time and resources moving forward.

Decisions/votes held in this meeting would be void and have to be heard again, delaying this even further than if you hold a properly noticed special meeting (if time is your concern).

Best,  
Mylon & CCUSF

On Wed, Nov 4, 2020 at 8:25 AM Ciitzens United <[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)> wrote:

Good morning,  
We are widening the scope of this notification once more.

Please let us know if you have a competing legal interpretation OR the City’s plan for complying with the Brown act and/or Administrative code 67.7 as it relates to the improperly noticed agenda for the 11/05/2020 Government Audit & Oversight Committee (GAO) meeting.

Please be advised that we are seeking a response and resolution to this matter by 6:00 PM PST, November 4th, 2020.

We hope to resolve this matter amicably in advance of the November 5th GAO meeting. We hope the City prioritizes not only compliance, but also accessibility.

Best,  
Mylon & CCUSF

On Tue, Nov 3, 2020 at 3:39 PM Ciitzens United <[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)>

wrote:

In accordance with legal advice, we are adding in Supervisors Mar, Peskin, and Haney as well as Chair Mar's staff.

Please acknowledge receipt.

Best,  
Mylon & CCUSF

On Tue, Nov 3, 2020 at 11:10 AM Ciitzens United

<[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)> wrote:

Hello John, members of SOTF, and SFCAO,  
We hope you all are doing well during these trying times.

We wanted to indicate that **the posted agenda is a violation of [The San Francisco Administrative Code section 67.7](#), which specifies:**

"At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting"

Specifically,

"A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item."

However, [the posted agenda](#) makes it appear that BOTH "adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA" and "approving settlement of two grievances filed by the POA against the City" will be heard in closed session, rather than in open session/public meeting.

***In fact, they are noticed as a single item, which furthers that interpretation.***

Therefore, if someone had interests affected by the SFPOA memorandum, then they would NOT understand that they have reason to attend the meeting because the SFPOA MOU hearing would not be discussed in the public meeting.

Furthermore, there is precedent for a clear & properly noticed agenda in which settlements and MOU discussions are heard separately as was done [in this agenda in 2018](#):

***Most importantly, it has already been empirically shown that this agenda is NOT understood by persons of average intelligence and education with affected interests as one that would give them reasons to attend the meeting to seek more information on the item as multiple members of the press, legal non-profits, and members of the public have reached out to Supervisors offices asking whether or not the SFPOA MOU will be discussed at the public meeting because this agenda does NOT convey that parties with affected interests have reason to attend the meeting. There are public records of this.***

***Therefore, this agenda is in violation of the Brown act AND/OR SF Administrative code 67.7.***

For reference, the current agenda states:

[Convene in Closed Session - Existing Litigation - City as Plaintiff and/or Defendant] Motion that the Government Audit and Oversight Committee of the Board of Supervisors convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding the following existing litigation and anticipated litigation. Administrative Code Section 67.10(d) permit this closed session. Discussion in open session concerning these matters would likely and unavoidably prejudice the position of the City in the pending lawsuits and claims listed below. After a closed session, if one occurs, the Committee shall adopt a motion either to disclose or not to disclose. [Memorandum of Understanding and Settlement of Grievances - Police Officers Association] Sponsor: Mayor Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association ("POA"), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for FY2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed amount of \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.

If your interpretation of Administrative Code 67.7 differs, please provide an explanation.

**Otherwise, if you could please correct the agenda to be in compliance with Administrative code 67.7 (and/or the Brown act) and post it if sufficient time exists or reschedule the meeting, not only for the sake of compliance, but also for accessibility, that would be greatly appreciated.**

Please acknowledge receipt of this email.

Best,  
Mylon on behalf of CCUSF

**From:** [Board of Supervisors \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Carroll, John \(BOS\)](#)  
**Subject:** FW: Meet and Confer & SFPOA MOU (#201050), Item #13, Closed Session GAO Committee Meeting of November 5th  
**Date:** Wednesday, November 4, 2020 5:04:37 PM

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**From:** John Crew <johnmikecrew@gmail.com>

**Sent:** Wednesday, November 4, 2020 4:40 PM

**To:** Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>

**Cc:** Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Elias, Cindy (POL) <cindy.elias@sfgov.org>; Taylor, Damali A. <dtaylor@omm.com>; John Hamasaki <john@hamasakilaw.com>; dionjaybrookter@gmail.com; maliacohen@boe.ca.gov; Petra DeJesus <petradejesus@comcast.net>; David Rizk <dwrizk@gmail.com>; Defund SFPD <defundsfpdnow@gmail.com>; SFPD, Commission (POL) <SFPD.Commission@sfgov.org>

**Subject:** Meet and Confer & SFPOA MOU (#201050), Item #13, Closed Session GAO Committee Meeting of November 5th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisor Mar,

Thank you for calling for a hearing on the City's meet and confer practices with respect to the SFPOA during yesterday's full meeting of the Board of Supervisors. For that hearing to be productive, it must be held **before** the GAO Committee holds a full public hearing on the SFPOA contract and the full Board votes on the proposed deal.

#### **BEEN THERE, TRIED THAT -- DIDN'T WORK**

You were not on the Board at the time so perhaps you've not been informed by DHR or by the Mayor's Office but the hearing you described in your remarks yesterday, in fact, is the same sort of hearing the GAO Committee **already** held in conjunction **with the 2018 contract talks** with the SFPOA that I mentioned in my correspondence yesterday. GAO Committee member London Breed and her colleagues heard testimony from DHR, from the City Attorney's Office, the Chief of Police and from the public about the DHR's meet and confer practices with SFPOA in a hearing that featured particularly aggressive and pointed questioning on that topic from then-Supervisor and current Police Commissioner Malia Cohen. ( That hearing can be viewed here -- [https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=11&clip\\_id=30081](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=11&clip_id=30081) .)

In fact, it was that hearing that led the City to demand that, in exchange for pay raises, the SFPOA contractually waive any right to impasse arbitration on USDOJ COPS reform topics. DHR later described this as an "essential objective" of the City for the SFPOA contract. Why? Because it's partly the threat of arbitration -- and the threat of SFPOA grievances or litigation over whether something is a mandatory subject of bargaining under state law (triggering their arbitration rights under the contract and the charter) -- that causes DHR to needlessly engage in, or needlessly extend, meet and confer talks on important reform topics. The waiver in the contract, fairly bargained in exchange for pay raises, would go a long way towards solving that problem.

If the GAO Committee and Board needlessly approves the proposed new "no reform" SFPOA deal guaranteeing two more 3% pay raises (which will cost **far more** in the long run than the short-term cost savings from the deferral of the 1% and 2% pay raises currently due in FY 2020/21) **without** addressing the meet and confer problem, it will be forfeiting all the leverage it has by rewarding the SFPOA's continued resistance to reform with new, fully-unconditional (in the non-economic, reform sense) pay raises. **It will be literally guaranteeing -- contractually -- that the extreme meet and confer delays very thoroughly documented by the Bar Association of San Francisco (BASf) will continue for at least an additional two years.**

( <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Oct%2022%20BASf%20ltr%20re%20SFPOA%20MC%20-%20Final%20-%20Signed.pdf> )

DHR knows that. The members of the 2018 GAO Committee, including Supervisor Breed, and the full Board knew that after that hearing. The public knew that too. We explained the problem and laid out the solution in an op ed published in advance of the hearing.

(<https://www.sfchronicle.com/opinion/openforum/article/No-pay-raise-for-SFPD-without-reform-12753915.php> ) In the wake of that

hearing, a broad-based community and legal coalition organized under the banner of #NoJusticeNoDeal demanded that the City include this much-needed contract provision in what they were seeking from the SFPOA in exchange for pay raises.

([https://drive.google.com/file/d/1RsH-ridjhtW56aEhyR89smBPD6WlQ4Ef/view?fbclid=IwAR1zWfUOZEckZh8hA\\_APE5aEAkQ1r-lqUTgE6rKHV0eA\\_4JxKHIXyXYGfw](https://drive.google.com/file/d/1RsH-ridjhtW56aEhyR89smBPD6WlQ4Ef/view?fbclid=IwAR1zWfUOZEckZh8hA_APE5aEAkQ1r-lqUTgE6rKHV0eA_4JxKHIXyXYGfw) .) A petition supporting the demand quickly garnered more than 1,000 signatures.

([https://campaigns.organizefor.org/petitions/nojusticenodeal?bucket&source=facebook-share-](https://campaigns.organizefor.org/petitions/nojusticenodeal?bucket&source=facebook-share-button&time=1517936018&fbclid=IwAR0FshpltKPwhxvjrt9UNiEbckZHUUJNFD-wMDCexTpeZG7IH8tpxfw1c)

[button&time=1517936018&fbclid=IwAR0FshpltKPwhxvjrt9UNiEbckZHUUJNFD-wMDCexTpeZG7IH8tpxfw1c](https://campaigns.organizefor.org/petitions/nojusticenodeal?bucket&source=facebook-share-button&time=1517936018&fbclid=IwAR0FshpltKPwhxvjrt9UNiEbckZHUUJNFD-wMDCexTpeZG7IH8tpxfw1c) ). And, within two weeks, the City embraced the proposal and put it on the bargaining table in their talks with the SFPOA. (<https://www.sfexaminer.com/news/sf-seeks-to-expedite-police-reform-with-new-contract-proposal/> )

## **ABANDONING POLICE REFORM AS A GOAL**

Yet, Mayor Breed in 2020 has **reversed** the position she took as Supervisor Breed in 2018 and this time, her DHR -- (unlike Interim Mayor Mark Farrell's DHR) -- apparently didn't even **ask** for this or any other reform-related concession in exchange for costly future pay raises guaranteed in the midst of the extreme fiscal crisis caused by the pandemic. Why is the City offering a "something for nothing" deal to the SFPOA while simultaneously **claiming** to want to quicken the pace on SFPD reform? Why would the Board approve **this** clunker of a deal without far more public scrutiny and appropriate skepticism? And, why would the Board hold **another** hearing on the meet and confer problem only **after** needlessly agreeing to a deal that -- **according to the City's own prior positions** -- would deeply compromise the ability to effectively address it?

Don't get me wrong. I'm a fan of the Board's oversight hearings and the enactment of non-binding resolutions calling for various actions. But when those steps **have already been tried** and failed previously to produce necessary changes -- and the Board has a golden opportunity (like it has here with the SFPOA contract) to actually **solve** a problem that has already been thoroughly documented and explored in **prior** hearings -- it must act. Failing to do so is tantamount to declaring the problem just not important enough to solve.

In 2018 -- in a **very** different fiscal environment -- the SFPOA turned down the City's contractual demand for the USDOJ COPS meet and confer / impasse arbitration waiver and took their shot at winning three 4% pay raises from an independent arbitrator. The City countered by offering three 3% pay raises tied to the reform proposal. The arbitrator ended up splitting the difference declining to impose the reform proposal but awarding only the lower pay raise. Among other things, the arbitrator cited the "impassioned and persuasive testimony" from the members of the #NoJusticeNoDeal Coalition at the public arbitration hearing who'd argued that the value to the City of the police services being purchased under the contract would be considerably less if the SFPOA was not prevented from continuing to block and delay reforms. (Arbitration Award, *In the Matter of an Interest Arbitration Between CCSF and SFPOA*, page 19.) In short, we are paying very top dollar for a modern, professional, reformed, as non-violent and anti-racist as possible police department. We're **still** not getting anything close to that with our now \$700 million a year investment in SFPD (with most of **that** going to wages and benefits set by the SFPOA contract). We have a right to contractually insist -- if the SFPOA **still** wants **more** pay raises year after year after year -- that the union finally put an end to its obstruction of what the public overwhelmingly wants.

## **THE CITY HAS LEVERAGE -- WHY NOT USE IT?**

That was the common sense argument then and it's the same damn argument now when the City (unfortunately) is in a **much** better bargaining position with respect to the SFPOA because of the fiscal crisis. They know that, should the Board send DHR back the bargaining table by withholding its approval of this deeply-flawed proposed deal -- negotiated without public or Police Commission input -- and the SFPOA continues to resist agreeing to now obviously necessary reform concessions, they will have a very difficult time convincing an arbitrator they must grant more pay raises to an already very well-compensated police force in the midst of the extreme fiscal uncertainty currently faced by San Francisco and other cities. The City has enormous leverage right now to finally limit the SFPOA's obstructionism and speed up the reform process. Why would it not at least **try** to use it?

Just three short months ago -- when the streets were still full of protestors outraged by government inaction in the face of very long-standing police violence and racism and while calls for massive defunding of the SFPD were still building -- all of the GAO Committee members and nine of eleven members of the full Board signed an op ed that stated plainly the problem that needs to be confronted locally:

"We declare that Black Lives Matter, and that justice must be done for the victims of police brutality and racism.

To transform policing in San Francisco, however, means recognizing the main obstacle, which is the San Francisco Police Officers Association."

The piece went on to detail the various ways the SFPOA has been blocking and delaying reforms including citing the meet and confer abuses detailed by BASF back in July (but that have nonetheless been inexplicably ignored in the "no reform" DHR-proposed deal for the SFPOA), and concluded with the simple exhortation that:

"(T)he POA must cease blocking reform measures."

(<https://www.sfxaminer.com/opinion/city-leaders-pledge-to-reject-sfpoa-support/> )

With all due respect and with genuine appreciation for your and your colleague's public service in very difficult times, those words will become empty and meaningless if the secretly-negotiated SFPOA deal is rubber-stamped without an appropriately-noticed, full public hearing and the opportunity to explore and pursue the many ways the SFPOA contract could be amended to address the already-faltering SFPD reform process which, to date, the SFPOA has been able to frustrate... just like they did with prior allegedly comprehensive SFPD reform efforts that have been tried too often before.

If other cities facing just as severe (if not worse) economic crises are using police union demands for pay raises to extract reform concessions, why not San Francisco?

If not now, when?

Sincerely,

John Crew  
(415) 793-4146

cc. Members, GAO Committee and Board of Supervisors  
Members, San Francisco Police Commission  
David Rizk, Bar Association of San Francisco  
DefundSFPDNow

**From:** [Defund SFPD](#)  
**To:** [Somera, Alisa \(BOS\)](#); [SOTF, \(BOS\)](#); [Carroll, John \(BOS\)](#); [Leger, Cheryl \(BOS\)](#); [Calvillo, Angela \(BOS\)](#)  
**Subject:** TIME SENSITIVE: 11/03 Brown act violations & establishing new procedures by 11/05  
**Date:** Wednesday, November 4, 2020 1:10:33 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Angela, Alisa, and John,

We hope election week has not been too challenging for you all!

We would like to file a formal complaint and would like to understand the appropriate venue for doing so. **We also request the Board establish processes to prevent future first amendment /Brown act violations, especially that on 11/05.**

Yesterday, **we received reports of at least 5 members of the public who reached out and independently heard ~ “the host has lowered all hands.” Subsequently, the clerk indicated there were no more people in line and the meeting was promptly adjourned.**

This appears to be a violation of the Brown act.

In a previous meeting we have also received reports of people simply not being called on.

While we understand technology can present a challenge, yesterday appeared to be a clear intentional use of technology to “lower hands” and suppress speech.

**Our most urgent concern is to make sure there are processes in place to make sure this does not happen again--especially in tomorrow's 11/05 Government Audit and Oversight Committee.**

There is also an issue where sometimes a caller cannot lower or raise their hand at all and must call back-in.

We know you all are also committed to protecting free speech. With that we propose the following process:

- **Announce when there are 0 people left in the queue, but X listeners.**
- **Offer the explanation “there are 0 people left in the speaking queue. If you think you are in line to speak or would like to speak please dial \*3 until you hear your hand been raised. You may hear your hand has been lowered so be sure to dial \*3 until you hear your hand has been raised. “**
- **“If you are unable to hear that prompt, there are technical issues with WebEx and you must call back in. I will wait 80 seconds now to allow individuals to do so.”**
- I will now repeat this prompt again. ““there are 0 people left in the speaking queue. If you think you are in line to speak or would like to speak please push \*3 until you hear your hand been raised. You may hear your hand has been lowered so be sure to push \*3 until you hear your hand has been raised. If you are unable to hear that prompt, there are



technical issues and you must call back in. I will wait 80 seconds now to allow individuals to do so.”

- The 80 second timer has begun.
- Complete the call-in queue if any remains.”

If these meetings were occurring in person, a whole line of individuals would not simply be kicked out of the line. We hope you make every effort to have all voices heard and ensure that virtual meetings are not suppressing voices, especially during a pandemic.

We look forward to hearing your feedback on this proposal and appreciate your commitment to protecting the rights of all San Franciscans.

Sincerely,  
DefundSFPDNow

**From:** [Ciitzens United](#)  
**To:** [Board of Supervisors \(BOS\)](#); [Cityattorney](#); [SAgarwal@aclunc.org](#); [Peskin, Aaron \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [asoltani@aclunc.org](#); [dsnyder@firstamendmentcoalition.org](#); [Mar, Gordon \(BOS\)](#); [Carroll, John \(BOS\)](#); [Marstaff \(BOS\)](#); [Haney, Matt \(BOS\)](#); [organizing@aclunc.org](#); [SOTF \(BOS\)](#)  
**Subject:** Re: URGENT: Update Agenda for 11/05 GAO meeting [Violation of Admin Code 67.7]  
**Date:** Wednesday, November 4, 2020 8:26:16 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good morning,  
We are widening the scope of this notification once more.

Please let us know if you have a competing legal interpretation OR the City's plan for complying with the Brown act and/or Administrative code 67.7 as it relates to the improperly noticed agenda for the 11/05/2020 Government Audit & Oversight Committee (GAO) meeting.

Please be advised that we are seeking a response and resolution to this matter by 6:00 PM PST, November 4th, 2020.

We hope to resolve this matter amicably in advance of the November 5th GAO meeting. We hope the City prioritizes not only compliance, but also accessibility.

Best,  
Mylon & CCUSF

On Tue, Nov 3, 2020 at 3:39 PM Ciitzens United <[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)> wrote:

In accordance with legal advice, we are adding in Supervisors Mar, Peskin, and Haney as well as Chair Mar's staff.

Please acknowledge receipt.

Best,  
Mylon & CCUSF

On Tue, Nov 3, 2020 at 11:10 AM Ciitzens United <[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)> wrote:

Hello John, members of SOTF, and SFCAO,  
We hope you all are doing well during these trying times.

We wanted to indicate that **the posted agenda is a violation of [The San Francisco Administrative Code section 67.7](#), which specifies:**

"At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting"

Specifically,

"A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting"

| or seek more information on the item."

However, [the posted agenda](#) makes it appear that BOTH "adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA" and "approving settlement of two grievances filed by the POA against the City" will be heard in closed session, rather than in open session/public meeting.

***In fact, they are noticed as a single item, which furthers that interpretation.***

Therefore, if someone had interests affected by the SFPOA memorandum, then they would NOT understand that they have reason to attend the meeting because the SFPOA MOU hearing would not be discussed in the public meeting.

Furthermore, there is precedent for a clear & properly noticed agenda in which settlements and MOU discussions are heard separately as was done [in this agenda in 2018](#):

***Most importantly, it has already been empirically shown that this agenda is NOT understood by persons of average intelligence and education with affected interests as one that would give them reasons to attend the meeting to seek more information on the item as multiple members of the press, legal non-profits, and members of the public have reached out to Supervisors offices asking whether or not the SFPOA MOU will be discussed at the public meeting because this agenda does NOT convey that parties with affected interests have reason to attend the meeting. There are public records of this.***

***Therefore, this agenda is in violation of the Brown act AND/OR SF Administrative code 67.7.***

For reference, the current agenda states:

[Convene in Closed Session - Existing Litigation - City as Plaintiff and/or Defendant]  
Motion that the Government Audit and Oversight Committee of the Board of Supervisors convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding the following existing litigation and anticipated litigation. Administrative Code Section 67.10(d) permit this closed session. Discussion in open session concerning these matters would likely and unavoidably prejudice the position of the City in the pending lawsuits and claims listed below. After a closed session, if one occurs, the Committee shall adopt a motion either to disclose or not to disclose. [Memorandum of Understanding and Settlement of Grievances - Police Officers Association] Sponsor: Mayor Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association ("POA"), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for FY2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed amount of \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.

If your interpretation of Administrative Code 67.7 differs, please provide an explanation.

Otherwise, **if you could please correct the agenda to be in compliance with Administrative code 67.7 (and/or the Brown act) and post it if sufficient time exists or reschedule the meeting, not only for the sake of compliance, but also for accessibility,** that would be greatly appreciated.

Please acknowledge receipt of this email.

Best,  
Mylon on behalf of CCUSF

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Carroll, John \(BOS\)](#)  
**Subject:** FW: Reject SFPD contract with SFPOA (File No. 201050)  
**Date:** Tuesday, November 3, 2020 5:09:52 PM

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**From:** Iris Biblowitz <irisbiblowitz@hotmail.com>  
**Sent:** Tuesday, November 3, 2020 12:40 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Reject SFPD contract with SFPOA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors - In the midst of strong community movements fighting racism and police violence, San Francisco seems to be going in the wrong direction. The proposed contract that the city (DHR) negotiated in private, without public comment or any transparency, with the SFPOA, rewards SFPD financially with raises for two years but asks them for no accountability, no increased reforms for the safety of the community (especially communities of color). In Chicago, negotiations with their police fraternity is combined with 40 disciplinary reforms, transparency, and public comment.

The traumatic history of SFPD's murder of (mostly) young people of color, including Cesar Vargas last month, points to the urgent need to reject the current proposal and start over, with a strong light on transparency, accountability, and community involvement, and against racism and violence in their action in the community

Thank you - Iris Biblowitz, RN

From: [Board of Supervisors \(BOS\)](#)  
To: [BOS-Supervisors](#)  
Cc: [Candice Jones \(BOS\)](#)  
Subject: FW: Inadequate public notice -- SFPOA MOU (#201050), Item #13, Closed Session GAO Committee Meeting of November 5th  
Date: Tuesday, November 3, 2020 4:12:37 PM

From: John Crew <johnmikecrew@gmail.com>

Sent: Tuesday, November 3, 2020 3:27 PM

To: Mar, Gordon (BOS) <gordon.mar@sfgov.org>

Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; MandelmanStaff, [BOS]

<mandelmanstaff@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Asha (BOS) <asha.safai@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Board of Supervisors, (BOS) <board.supervisors@sfgov.org>;

Taylor, Damali A. <dtaylor@omm.com>; maliachen@boe.ca.gov; donjaybrookter@gmail.com; John Hamasaki <john@hamasaklaw.com>; Petra DeJesus <petradejesus@comcast.net>; Elias, Cindy (POL) <cindy.elias@sfgov.org>; SFPO, Commission (POL) <SFPO.Commission@sfgov.org>; David

Rizk <drizk@gmail.com>; Defund SFPO <defundsfponow@gmail.com>; Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>

Subject: Inadequate public notice -- SFPOA MOU (#201050), Item #13, Closed Session GAO Committee Meeting of November 5th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisor Mar,

Thank you again for the conversation yesterday about the GAO Committee's consideration of the proposed SFPOA MOU on Thursday. I appreciate that you intend to hold at least some of the discussion in public, possibly ask questions of City representatives in public and accept public testimony but I remain very concerned that there has been no formal notice provided to the broader public and press about your intention.

I also have deep substantive concerns about the proposed deal, negotiated by DHR with the SFPOA entirely behind closed doors, with no public input or discussion -- (unlike in 2018 and contrary to various, current best practices recommendations for handling police union contracts) -- much less the active involvement of the Police Commission and the various stakeholders who have been engaged for years now in good faith efforts aimed at allegedly **collaborative** reform of the SFPO. I think DHR has struck a very bad proposed deal that, if approved, would facilitate and perpetuate the SFPOA's resistance to reform by awarding them two 3% annual pay raises costing the City more than \$22 million by FY 2022-23 -- (even **after** accounting for the short-term deferral of raises due under their current contract) -- **without** addressing much-needed changes in the non-economic terms of the contract and instead locking those problematic provisions in place through mid-2023. I can detail those substantive concerns separately.

#### INADEQUATE NOTICE UNDER BROWN ACT & SUNSHINE ORDINANCE

For now, I think it's a bad idea to ignore the Brown Act and Sunshine Ordinance problems with how this item has been listed on the Committee's agenda. **If the opportunity for public consideration of the proposed SFPOA contract has not been adequately noticed, any action the Committee takes with respect to the contract is vulnerable to legal challenge.** Rather than possibly being forced to "do it over" later, the Committee should "do it right" now by making sure there is a full, clearly agendized, public consideration of the SFPOA contract just like your Committee will be doing with seven **other** proposed MOUs on its Thursday "regular agenda." There is no sound public policy reason for why the SFPOA proposed deal should be noticed **only** as a "closed session" item and there is certainly no legal necessity for proceeding on that basis.

Apparently, the SFPOA made its acceptance of the overall proposed contract contingent on the settlement of two relatively minor pay grievances that will cost the City \$360,000 to settle. That may justify a closed session discussion **on that narrow topic** but it does not obviate the need for an adequately-noticed public consideration of what the City is getting in return (if anything) for locking in \$22 million in pay increases for the SFPOA in FY 2022-23. Per the Controller's October 28th analysis, the combined new wage and benefit costs of all the MOUs in FY 2022-23 the Committee is poised to consider on Thursday is \$36 million, almost two-thirds of which comes from the proposed deal with the SFPOA. It makes no sense for the Committee to openly consider the other seven MOUs while noticing only a **closed session** discussion of the most expensive (and controversial) one for the SFPOA.

The Brown Act requires a brief general description of the agenda topic and potential action to be considered. The San Francisco Sunshine Ordinance requires a "meaningful description" that is --

"... is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English."

(Administrative Code Section 67.7(b)). Seeing the Committee's agenda clearly listing the other seven MOUs under the "Regular Agenda" with the SFPOA MOU listed separately and only as the sole item under the closed session part of the agenda at the end explicitly under the "Litigation" & "Conference with City Attorney" section, I assumed there would be no "regular" -- as in public -- consideration of the SFPOA deal. I think most people of average intelligence and education would make the same assumption. I went to law school and have decades of experience in how San Francisco bodies notice items on their meeting agendas and how nearly always closed session items are handled -- namely with little if any public discussion. If I made that assumption from the agenda, it's reasonable to assume others would as well. In the last 35 years, I can't think of a single occasion where a Board committee or the Police Commission held a full public discussion with public officials and public testimony on an item that had only been listed only on a **closed session** agenda and described as a **legal settlement**. Not once. So while I appreciate that you intend to hold that sort of public discussion Thursday, the fact remains that a Brown Act / Sunshine Ordinance flaw in how an item is listed on an agenda can't be cured through individual conversations and the flaw will leave any action you take vulnerable to later legal challenge.

#### GOOD GOVERNMENT AND COLLABORATIVE POLICE REFORM REQUIRE FULL TRANSPARENCY

Beyond the flaw in the notice, I'm surprised that anyone -- the City Attorney's Office, DHR, whomever -- would think it appropriate for the Board to approve the expensive and controversial proposed deal with the SFPOA without any public consideration of it on the regular agenda of a Board committee -- especially when all the less expensive, apparently non-controversial MOUs for the other public employee unions are being handled in the normal, public, "regular agenda" fashion. Is it even legal to try to minimize public discussion of the proposed SFPOA MOU by using the \$360,000 grievance settlement to list the entire far more expensive and consequential deal solely on a closed session agenda? I don't know but it's certainly not good, fully transparent, governance.

In 2018, the GAO Committee held a well-attended, widely-publicized, clearly-noticed, full public hearing on the SFPOA contract negotiations. (See agenda item #3, File #180164 - [https://sfpos.org/sites/default/files/gao037118\\_agenda.pdf](https://sfpos.org/sites/default/files/gao037118_agenda.pdf).) The committee publicly-questioned DHR's Employee Relations Director, Carol Isen, at some length about the contract talks followed by extensive public testimony. In her concluding remarks, GAO Committee member and then-Supervisor London Breed said it was "extremely important" that the public's concerns be addressed in the contract with the SFPOA --

"We are definitely committed to the reforms and committed to making sure that we will **embed in the contract** specifically what we can as it relates to how we can make this work to address many of the concerns that have been addressed here today."

(Emphasis added. Supervisor Breed's full remarks start at approximately the 2:06 mark of the video of that hearing.)

In turn -- and in a clear demonstration of the underlying purpose and value of holding and properly noticing full public hearings -- the City subsequently proposed to the SFPOA a contract provision be incorporated into the deal in exchange for pay and benefit increases that was described by Ms. Isen of DHR in her part of the subsequent arbitration decision. In her words **then** --

"Speedy implementation of the Department of Justice's recommendations in an **essential objective** of the City.... The City's proposal... provides for an expedited meet and confer process without the delay caused by impasse arbitration."

(Arbitration award, pg. 23, emphasis added.)

Yet, in 2020, DHR has inexplicably secretly negotiated a deal with the SFPOA -- without any public input at all and no reform concessions from SFPOA -- which they first told SFPO Chief William Scott they would happily explain to the Police Commission only to reverse course a few weeks later and refuse to do so... and which they now apparently want to be considered only as a closed session item on the GAO Committee's agenda. In the wake of the police killing of George Floyd, Chief Scott joined 64 of his colleagues in the Major Cities Chiefs Association in a June 4th open letter that declared, in part, that "the balance of (police) labor and management is often out of calibration" and calling for a "review" of contracts with police unions. ([https://www.majorcitieschiefs.com/pdf/news/mcca\\_open\\_letter\\_update.pdf](https://www.majorcitieschiefs.com/pdf/news/mcca_open_letter_update.pdf).) But there's been no such public review at all in San Francisco and even Chief Scott was seemingly left out of the loop by DHR in the SFPOA negotiations telling the Police Commission, "DHR is in charge and that's about as much as I know... Just like everyone else, the Department is waiting to hear the results." (Meeting of August 19th.) "The Department was not involved in those negotiations... I wasn't involved in it and neither was anybody else from the Department... I wasn't part of those conversations." (Meeting of September 16th.)

Meanwhile, the proposed deal with the SFPOA has remained shrouded in confounding secrecy while other cities are already dealing with police union contracts far more openly and **full** transparency has emerged as a consensus best practice recommendation from everyone from the US Conference of Mayors to the NAACP Legal Defense and Education Fund to the more activist-oriented Campaign Zero whose proposals SFPO has previously used as an appropriate benchmark for their own reform efforts. (See my prior correspondence on this subject for more details and links to underlying sources -- <https://sfgov.org/policecommission/sites/default/files/documents/PoliceCommissionSFPOA%20Contract%2C%20Meet%20%26%20Confer%20Abuses%2C%20Community%20Policing%20%26%20BWC%20DGOs%20%28Items%20%23%26%20%23%2C%20Mtg.%20of%20Oct.%2017%29.pdf>.)

Even police union lawyers now recognize the need for maximum transparency rather than back-room dealmaking and secrecy when it comes to negotiating and approving police union contracts given intense public demands for fundamental change in American policing. Ronald Yank is a prominent long-time, Bay Area police union attorney who joined with retired judges like Thelton Henderson and Joe Grodin as well as law professors and labor arbitrators to recently propose that:

"**(B)efore** a public entity commences negotiation with a law enforcement union, that entity must conduct a **public hearing** on its bargaining proposals **with sufficient notice and opportunity for public comment**. **After** a collective bargaining agreement or memorandum of understanding with the law enforcement union is negotiated, **the public entity must conduct a public hearing, with sufficient notice and opportunity for public comment**, before the agreement is ratified.

These reforms will enable the public to know the possible or likely terms of a collective bargaining agreement before such an agreement is negotiated or signed. This information will aid the public in holding elected and appointed officials accountable for the police contracts they negotiate. It will also provide the public with **the opportunity to ensure that the contracts serve the public interest.**"

(<http://www.californialawreview.org/reforming-law-enforcement-labor-relations/>, emphasis added.)

#### POSTPONE -- BAD PROCESS ENABLES A BAD DEAL

As it stands... and thanks to the inexplicable reversal in how DHR has handled the contract negotiations with the SFPOA this year compared with how they were handled in 2018... San Francisco is poised to do the exact opposite. The GAO Committee is being asked to consider and approve -- under a closed session agenda item -- a deal that DHR has thus far refused to explain publicly, based on negotiating demands that appear to be completely disconnected from the police reform agenda the City claims to be pursuing, and that is the very epitome of the sort back-room deal-making that undermines public confidence.

Under these circumstances, I believe the consideration of the proposed SFPOA contract should be postponed to a future GAO Committee meeting where it should appear -- like it did in 2018 -- on the public, regular agenda. I think that is both legally prudent and a practical necessity to ensure adequate review of the proposed deal that has inexplicably abandoned the City's prior "essential objective" of speeding up the reform process with changes in the non-economic terms of its contract with the SFPOA and consideration of the public's more fully-informed views about it.

As other cities have already learned, effective police reform and a re-imagining of public safety services are simply not possible if San Francisco again saddles itself with a bad and inadequately examined contract with its police union. A bad deal doesn't become better with less openness. Full transparency -- of the type that comes only from a timely, clearly-noticed, full public hearing -- is the only thing that can rescue the credibility of ostensibly "collaborative" police reform in San Francisco and save us from **two more years** of the reform process being unnecessarily held hostage by the SFPOA under the terms of a contract that very much benefits them but not the public.

Thank you.

John Crew  
(415) 793-4146

cc: Members, GAO Committee and Board of Supervisors  
Members, San Francisco Police Commission  
David Rizk, Bar Association of San Francisco  
DefundSFPOnow

**From:** [Citizens United](#)  
**To:** [SOTF, \(BOS\)](#); [Cityattorney: asoltani@aclunc.org](#); [organizing@aclunc.org](#); [SAgarwal@aclunc.org](#); [Carroll, John \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Marstaff \(BOS\)](#)  
**Subject:** Re: URGENT: Update Agenda for 11/05 GAO meeting [Violation of Admin Code 67.7]  
**Date:** Tuesday, November 3, 2020 3:40:04 PM

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In accordance with legal advice, we are adding in Supervisors Mar, Peskin, and Haney as well as Chair Mar's staff.

Please acknowledge receipt.

Best,  
Mylon & CCUSF

On Tue, Nov 3, 2020 at 11:10 AM Citizens United <[concernedcitizensunitedsf@gmail.com](mailto:concernedcitizensunitedsf@gmail.com)> wrote:

Hello John, members of SOTF, and SFCAO,  
We hope you all are doing well during these trying times.

We wanted to indicate that **the posted agenda is a violation of [The San Francisco Administrative Code section 67.7](#), which specifies:**

"At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting"

Specifically,

"A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item."

However, [the posted agenda](#) makes it appear that BOTH "adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA" and "approving settlement of two grievances filed by the POA against the City" will be heard in closed session, rather than in open session/public meeting.

***In fact, they are noticed as a single item, which furthers that interpretation.***

Therefore, if someone had interests affected by the SFPOA memorandum, then they would NOT understand that they have reason to attend the meeting because the SFPOA MOU hearing would not be discussed in the public meeting.

Furthermore, there is precedent for a clear & properly noticed agenda in which settlements and MOU discussions are heard separately as was done [in this agenda in 2018](#):

***Most importantly, it has already been empirically shown*** that this agenda is NOT understood by persons of average intelligence and education with affected interests as one that would give them reasons to attend the meeting to seek more information on the item as

*multiple members of the press, legal non-profits, and members of the public have reached out to Supervisors offices asking whether or not the SFPOA MOU will be discussed at the public meeting because this agenda does NOT convey that parties with affected interests have reason to attend the meeting. There are public records of this.*

*Therefore, this agenda is in violation of the Brown act AND/OR SF Administrative code 67.7.*

For reference, the current agenda states:

[Convene in Closed Session - Existing Litigation - City as Plaintiff and/or Defendant]  
Motion that the Government Audit and Oversight Committee of the Board of Supervisors convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding the following existing litigation and anticipated litigation. Administrative Code Section 67.10(d) permit this closed session. Discussion in open session concerning these matters would likely and unavoidably prejudice the position of the City in the pending lawsuits and claims listed below. After a closed session, if one occurs, the Committee shall adopt a motion either to disclose or not to disclose. [Memorandum of Understanding and Settlement of Grievances - Police Officers Association] Sponsor: Mayor Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association ("POA"), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for FY2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed amount of \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.

If your interpretation of Administrative Code 67.7 differs, please provide an explanation.

**Otherwise, if you could please correct the agenda to be in compliance with Administrative code 67.7 (and/or the Brown act) and post it if sufficient time exists or reschedule the meeting, not only for the sake of compliance, but also for accessibility, that would be greatly appreciated.**

Please acknowledge receipt of this email.

Best,  
Mylon on behalf of CCUSF



**From:** [Citizens United](#)  
**To:** [SOTF \(BOS\)](#); [Cityattorney](#); [asoltani@aclunc.org](#); [organizing@aclunc.org](#); [SAgarwal@aclunc.org](#); [Carroll, John \(BOS\)](#)  
**Subject:** URGENT: Update Agenda for 11/05 GAO meeting [Violation of Admin Code 67.7]  
**Date:** Tuesday, November 3, 2020 11:10:39 AM

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Hello John, members of SOTF, and SFCAO,  
We hope you all are doing well during these trying times.

We wanted to indicate that **the posted agenda is a violation of [The San Francisco Administrative Code section 67.7](#), which specifies:**

"At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting"

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***Most importantly, it has already been empirically shown*** that this agenda is NOT understood by persons of average intelligence and education with affected interests as one that would give them reasons to attend the meeting to seek more information on the item as ***multiple members of the press, legal non-profits, and members of the public have reached out to Supervisors offices asking whether or not the SFPOA MOU will be discussed at the public meeting because this agenda does NOT convey that parties with affected interests have reason to attend the meeting. There are public records of this.***

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[Convene in Closed Session - Existing Litigation - City as Plaintiff and/or Defendant] Motion that the Government Audit and Oversight Committee of the Board of Supervisors convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding the following existing litigation and anticipated litigation. Administrative Code Section 67.10(d) permit this closed session. Discussion in open session concerning these matters would likely and unavoidably prejudice the position of the City in the pending lawsuits and claims listed below. After a closed session, if one occurs, the Committee shall adopt a motion either to disclose or not to disclose. [Memorandum of Understanding and Settlement of Grievances - Police Officers Association] Sponsor: Mayor Ordinance adopting and implementing the Tentative Agreement between the City and County of San Francisco and the San Francisco Police Officers Association (“POA”), including: (1) adopting and implementing the First Amendment to the 2018-2021 Memorandum of Understanding between the City and POA, to defer wage increases currently set for FY2020-2021, amend the retention premium provisions, amend the 10B overtime provisions, extend the term by two years, and set wages for the additional term; and (2) approving settlement of two grievances filed by the POA against the City, for a not to exceed amount of \$359,613.87; the grievances were filed on March 25, 2020, and June 29, 2020, and involve compensation disputes under the Memorandum of Understanding.

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Otherwise, **if you could please correct the agenda to be in compliance with Administrative code 67.7 (and/or the Brown act) and post it if sufficient time exists or reschedule the meeting, not only for the sake of compliance, but also for accessibility**, that would be greatly appreciated.

Please acknowledge receipt of this email.

Best,  
Mylon on behalf of CCUSF

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Carroll, John \(BOS\)](#)  
**Subject:** FW: BASF Letter re: SFPOA Meet & Confer  
**Date:** Thursday, October 22, 2020 10:46:07 AM  
**Attachments:** [Oct 22 BASF ltr re SFPOA M&C - Final - Signed.pdf](#)  
**Importance:** High

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**From:** Mikele Lewis-Nelson <mlewis@sfbare.org>  
**Sent:** Thursday, October 22, 2020 9:45 AM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; SFPD, Commission (POL) <SFPD.Commission@sfgov.org>  
**Cc:** 'Nancy.Beninati@doj.ca.gov' <Nancy.Beninati@doj.ca.gov>; SFPD, Chief (POL) <sfpdchief@sfgov.org>; Cityattorney <Cityattorney@sfcityatty.org>; Isen, Carol (HRD) <carol.isen@sfgov.org>  
**Subject:** BASF Letter re: SFPOA Meet & Confer  
**Importance:** High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good morning,

Please see the attached letter, *sent on behalf of Stuart Plunkett, President of the Bar Association of San Francisco.*

Thank you,  
Mikele Nelson

Mikele Lewis-Nelson | Executive Assistant  
The Bar Association of San Francisco | 301 Battery Street, Third Floor | San Francisco, CA 94111  
Tel: 415-782-8998 | Fax: 415-477-2388  
[mlewis@sfbare.org](mailto:mlewis@sfbare.org) | [www.sfbare.org](http://www.sfbare.org)  
(First name pronounced – Mih-KELL)

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Yolanda M. Jackson

October 22, 2020

San Francisco Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

San Francisco Police Commission Office  
1245 3rd Street, 6th Floor  
San Francisco, CA 94158  
[sfpd.commission@sfgov.org](mailto:sfpd.commission@sfgov.org)

Dear San Francisco Supervisors and Police Commissioners:

The Bar Association of San Francisco's Criminal Justice Task Force ("BASF-CJTF"<sup>1</sup>) writes regarding our concern about the tentative Memorandum of Understanding ("MOU") reached between the S.F. Department of Human Resources ("DHR") and the S.F. Police Officers' Association ("SFPOA") that is subject to SFPOA membership and the S.F. Board of Supervisors approval. . BASF-CJTF proposes long overdue reforms to DHR's practices in conducting collective bargaining meet-and-confer sessions with SFPOA.

### **Executive Summary**

BASF-CJTF is concerned because this MOU was negotiated without consulting the Police Commission, S.F. Department of Police Accountability ("DPA"), the District Attorney's Office ("DA"), or other key stakeholders in San Francisco Police Department's ("SFPD") collaborative reform process.<sup>2</sup> The new MOU that extends the SFPD contract does not

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<sup>1</sup> The Bar Association of San Francisco ("BASF") represents 7,500 members and is the largest legal organization in Northern California dedicated to criminal justice reform. In 2015, BASF established the Criminal Justice Task Force ("CJTF"), consisting of judges, prosecutors, public defenders, law enforcement, private defense counsel, civil liberties advocates, and others, to advance systemic reforms in San Francisco.

<sup>2</sup> In connection with our concerns, we are simultaneously serving requests on DHR for materials related to the negotiation of the MOU under the California Public Record Act (Govt. Code § 6250 *et seq.*; "CPRA").



advance any of the objectives of the collaborative reform process. These significant omissions counsel against your approval of the MOU. At a minimum, we call upon you to delay a vote on ratification of the MOU until November, (1) to enable the development of accompanying reforms (proposed herein) to the City's relationship with the SFPOA, and (2) to assess the relative financial cost of rejecting the MOU after the November election, given that the election results could strengthen the City's financial outlook.

Instead, we propose a slate of structural reforms to the City's collective bargaining process with SFPOA, in particular, to the meet-and-confer process. For many years, BASF-CJTF has fielded complaints from criminal justice agencies, community groups, and other stakeholders familiar with the negotiations, that SFPOA substantially delays reform by drawing out negotiations with DHR, by arguing to include management matters that are not properly the subject of bargaining.

Thus, reforms to collective bargaining with SFPOA are long overdue. The City must prioritize transparency, timeliness, and the advancement of substantive police reforms. The law supports these principles: it recognizes that formulating policies that promote public safety and trust between police agencies and the communities they serve is a fundamental duty of local government that must not be encumbered with undue delays, or worse, bargained away behind closed doors. *State law permits far greater transparency in collective bargaining than DHR's current practices.*

We propose the following immediate changes:

- (1) DHR must stop agreeing to meet and confer with SFPOA over management matters that are not subject to collective bargaining under California law;
- (2) DHR must set clear boundaries to the meet-and-confer process to end unreasonable delays on reforms for matters within the scope of representation;
- (3) meet-and-confer meetings and related correspondence between DHR and SFPOA should be public and transparent; and,
- (4) DHR should consult with key stakeholders concerning reform objectives throughout negotiations with SFPOA.

The first three of these changes could be memorialized in the MOU, although agreement between the parties is not necessarily required. The last reform simply requires changes to the manner in which DHR

interacts with stakeholders. All of these reforms could be implemented without any changes to the MOU because, these proposals are consistent with California law and none requires agreement with SFPOA (*see infra.*) *Thus, all of these reforms could be achieved by legislative action by the Board of Supervisors, or by directive from the Police Commission.*

**I. The City must reform the meet-and-confer process between DHR and SFPOA before approving the MOU.**

The existing meet-and-confer process between DHR and SFPOA urgently needs reform. In 2016, the U.S. Department of Justice (“USDOJ”) identified the problem with Recommendation 3.2:

The SFPD should work with the Police Commission to obtain input from the stakeholder groups and conduct an after-action review of the meet-and-confer process to identify ways to improve input and expedite the process in the future for other policy development.

USDOJ made this particular recommendation following the meet-and-confer between DHR and SFPOA over Department General Order (“DGO”) 5.01 (“Use of Force”). That high-profile negotiation was drawn out over six months, despite USDOJ’s urgent pleas for it to conclude.

SFPD claims to be in “substantial compliance” with Recommendation 3.2’s requirements.<sup>3</sup> In a July 2020 memo to the Police Commission, SFPD claimed that it had solicited input from stakeholders in the 2016 use-of-force policy negotiations, conducted an after-action review in 2017, and identified and implemented ways to streamline the meet-and-confer process with Commission staff in 2018-19.<sup>4</sup> However, a recent report from the California Department of Justice (“Cal DOJ”) and Hillard Heintze, reveals that SFPD consulted with the Police Commission regarding Recommendation 3.2, but has not met its required

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<sup>3</sup> See Ex. A. Sgt. Kilshaw Email to Police Commission, re: “protocols when receiving DGOs/policies for Commission adoption,” July 7, 2020 (asserting, “Recommendation 3.2 achieved substantial compliance in May 2020.”).

<sup>4</sup> See Ex. B. SFPD Collaborative Reform Completion Memorandum (March 3, 2020).

stakeholders' input, conducted an after-action review, or identified ways to expedite the meet-and-confer process.<sup>5</sup>

SFPD's efforts have not been effective. Since 2016, the meet-and-confer process has delayed—*by months to years*—a number of policy reforms that promote public safety and reinforce public trust in SFPD. For example, DHR's meet-and-confer negotiations with SFPOA have delayed *for years* proposed changes to DGO 10.11 ("Body Worn Cameras" (BWC)) that were approved by the Police Commission in January 2018. More recently, implementations of DGO 5.17 ("Bias-Free Policing Policy") and DGO 5.23 ("Interactions with Deaf and Hard of Hearing Individuals") also were delayed as a result of the meet-and-confer process.

BASF-CJTF will submit California Public Records Act ("CPRA") requests to DHR for materials related to the meet-and-confer processes for each of these DGOs. Remarkably, the public, and even the Police Commission, DPA, the DA's Office, and other stakeholders in the collaborative reform process, *are often unaware of when or why DHR is conducting meet-and-confer meetings with SFPOA* over policies that the Police Commission has already approved. As set forth below, greater expediency and transparency in the process would comport with California law and lead to superior policy outcomes for San Francisco.

## **II. California law requires the City to meet-and-confer over working conditions; negotiation of management matters is neither required nor appropriate.**

DHR must stop voluntarily negotiating over management matters with SFPOA, and instead limit negotiations to working conditions and, under limited circumstances, the "effects" of management decisions on working conditions. See Govt. Code §3504. Contrary to the law, the Police Commission's explicit direction, as well as SFPD's representations to Cal DOJ, DHR's steady practice has been to negotiate exhaustively over any matter SFPOA wishes to discuss.<sup>6</sup> Since reform efforts began in 2016,

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<sup>5</sup> See Cal DOJ & Hillard Heintze, SFPD Collaborative Reform Initiative, Phase II (March 4, 2020) – 18 Month Progress Report, App'x C at 3, available at <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Hillard%20Heintze%20Phase%20II%20Report%20for%20the%20San%20Francisco%20Police%20Department-1.pdf>.

<sup>6</sup> The current MOU states that the City or DHR "shall give reasonable written notice to the Association of *any proposed change in general orders* or other matters within the scope of representation as specified by





SFPOA has exploited this practice repeatedly to delay management reforms that never should have been the subject of collective bargaining in the first place.

California's Meyers-Milias-Brown Act (Govt. Code § 3500, *et seq.*; "MMBA") governs labor relations with public sector employees, including peace officers. The MMBA requires management to meet-and-confer in good faith with union representatives over matters that are within the "scope of [union] representation," *i.e.*, "all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, *except, however*, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order." (Govt. Code § 3504 (emphasis added).)

*Thus, management matters are the clear exception to meet-and-confer.* Importantly, the MMBA recognizes "the right of employers to make unconstrained decisions when fundamental management or policy choices are made." *Claremont Police Officers Ass'n v. City of Claremont* (2006) 39 Cal. 4th 623, 632. "To require public officials to meet and confer with their employees regarding fundamental policy decisions . . . would place an intolerable burden upon fair and efficient administration of state and local government." *Berkeley Police Ass'n v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 937. Indeed, at least as to some core management issues—such as placing policy limits on the use-of-force, or other management functions that maintain public confidence in law enforcement—negotiation, even if purportedly "voluntary" and non-binding, is inappropriate and inconsistent with the law. *San Jose Peace Officer's Ass'n v. City of San Jose* (1978) 78 Cal. App. 3d 935, 947 (local "government agency may not suspend, bargain or contract away its police power" arising under the California Constitution, which

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Government Code Section 3504.5." See MOU between City and County of San Francisco and SFPOA Units P-1 and P-2A (July 1, 2018-June 30, 2021) (emphasis added), *available at* <https://sfdhr.org/sites/default/files/documents/MOUs/POA-2018-2021.pdf>. We do not believe that the parties intended the MOU to obligate the City and DHR to negotiate over "any proposed change to a general order," regardless of whether the change falls within the scope of representation. As set forth below, such a purported obligation would far exceed, and arguably violate, California law. This language must be struck from the MOU to comply with the limitations placed by law on the scope of collective bargaining negotiations.





encompasses, among other things, the “power of a city to enact and enforce regulations relating to the use of firearms by police officers”).

Where management decisions have a significant adverse *effect* on wages, hours, or working conditions, the California Supreme Court has adopted a balancing test to determine whether those effects must be subject to the meet-and-confer requirement. *Building Material and Const. Teamsters’ Union, Local 216 v. Farrell* (1986) 41 Cal. 3d 651, 660; *Claremont*, 39 Cal. 4th at 638. The test asks whether “the employer’s need for unencumbered decision making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question.” *Building Material*, 41 Cal. 3d at 660; *Claremont*, 39 Cal. 4th at 630.

In balancing these factors, “a court may also consider whether the ‘transactional cost of the bargaining process outweighs its value.’” *Building Materials* 41 Cal. 3d at 660; *Claremont*, 39 Cal. 4th at 638 (“We believe this ‘transactional cost’ factor is not only consistent with the *Building Material* balancing test, *but its application also helps to ensure that a duty to meet and confer is invoked only when it will serve its purpose.*” (emphasis added)). Delays caused by extended bargaining and the legal process are an important “transactional cost” incurred by management under this analysis. The Court of Appeal, in a 2018 ruling on SFPD’s use-of-force policy, reasoned that the City is not required to meet-and-confer over, let alone arbitrate, changes to the use-of-force policy, because such a requirement “would defeat the purpose of requiring cities to make fundamental managerial or policy decisions independently” and because “*it would essentially allow the Association to hold the policy in abeyance indefinitely by claiming the City acted in bad faith when it ended its voluntary negotiations without conferring over certain unstated impacts the policy might have on police officers.*” *San Francisco Police Officers’ Ass’n v. San Francisco Police Comm’n* (2018) 238 Cal.Rptr.3d 753, 764 (emphasis added).

SFPD entirely overlooked the *Building Materials* balancing test entirely in its “Completion Memorandum” for Recommendation 3.2.<sup>7</sup> The City

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<sup>7</sup> See Ex. B. SFPD Collaborative Reform Completion Memorandum (March 3, 2020) (“However, even in those instances where the decision is squarely a managerial prerogative, those decisions may have effects - for example on employee training and discipline - that are subject to meet and confer.”).



Attorney's Office has also taken a very restrictive view of the law perhaps to avoid litigation, but this has been at the cost of needed reforms. For example, in 2018 the City Attorney's Office and DHR apparently advised the Police Commission that the City was legally obligated to meet and confer with SFPOA over the DGO 10.11 (BWC) restriction prohibiting officers from reviewing BWC footage before making a statement to investigators regarding an officer-involved shooting or an in-custody death. The ensuing meet-and-confer process took *2.5 years* and resulted in the addition of *a single, non-binding sentence* to the policy (*see infra*).

In fact, the law is clear that such a restriction is within management's prerogative and is not an appropriate subject for collective bargaining. In *Ass'n of Orange Cnty. Deputy Sheriffs v. Cnty. of Orange* (2013) 217 Cal. App. 4th 29, the Court of Appeal held the county had no obligation to negotiate with the union over a policy that prohibited deputies from accessing the department's investigation file prior to being interviewed as part of the investigation. *Id.* at 44-45. The decision noted that the policy implemented "best practices" in investigations and was designed "to ensure the integrity and reliability of future internal affairs investigations." *Id.* at 45. Very similarly, in *Ass'n for Los Angeles Deputy Sheriffs v. Cnty. of Los Angeles* (2008) 166 Cal. App. 4th 1625, the Court of Appeal found that a policy prohibiting deputies from speaking with each other about an officer-involved shooting before being interviewed about the incident by investigators was a fundamental policy decision excluded from mandatory bargaining. *Id.* at 1644. The Court noted that the policy's objective "was to collect accurate information regarding deputy-involved shootings," and thus "foster greater public trust in the investigatory process." *Id.*

It is impossible to distinguish these decisions materially from DGO 10.11's restriction prohibiting officers from reviewing their BWC footage prior to making a statement to investigators in officer-involved shootings and in-custody deaths. The City Attorney was aware of these decisions during the meet-and-confer process because they were raised in the 2018 use-of-force litigation, yet the negotiations were allowed to proceed.<sup>8</sup>

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<sup>8</sup> The cases were discussed by the League of California Cities in an *amicus* brief filed in support of the City Attorney's Office during the litigation brought by SFPOA against SFPD's use-of-force policy. See Br. of Amicus Curiae League of California Cities, et al., (January 30, 2018), available at <https://www.cacities.org/Resources-Documents/Member->



In 2019, recognizing that DHR's willingness to collectively bargain over any matter was impeding reform efforts, former Police Commission President Robert Hirsch memorialized the Commission's prior directive from 2018 to DHR "to only meet and confer over mandatory subjects of bargaining."<sup>9</sup> SFPD also cites this directive in support of its claim to Cal DOJ that it has complied with Recommendation 3.2. Unfortunately, it is clear that DHR has not complied with the Commission's orders and that SFPD's representation to Cal DOJ continues to be false.

For example, the Police Commission recently released meet-and-confer correspondence from SFPOA to DHR concerning DGO 5.17, the bias policy.<sup>10</sup> The bias policy is a classic management matter that should not be the subject of collective bargaining. DHR, however, describes SFPOA's communication as a "counterproposal" to DGO 5.17. SFPOA's letter to DHR states: "On behalf of the San Francisco POA we want to thank you and the members of the City meet and confer team for discussing the proposed modifications to DGO 5.07 [sic], Bias-Free Policing. During our meet and confer session we raised a number of questions regarding the proposed language." *Id.* What follows are a variety of proposed changes to the bias policy that have no conceivable relation to working conditions. *Id.* For example, SFPOA requested that reference to the Fourth Amendment be removed from the introductory passage of the bias policy. *Id.*

That DHR elected to meet-and-confer over DGO 5.17 raises troubling questions about what other matters DHR has negotiated in the past several years. It also raises serious questions about the soundness of the City Attorney's legal advice concerning the scope of mandatory

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[Engagement/Professional-Departments/City-Attorneys/Request-Amicus-Support/Recent-Filings/Briefs-\(1\)/San-Francisco-POA-v-San-Francisco-Police-Commissi](#).

<sup>9</sup> Ex. C. R. Hirsch Ltr. to Cmdr. Walsh (June 19, 2019).

<sup>10</sup> Ex. D. L. Preston Memo to Police Comm., Re: DGO 5.17 Policy Prohibiting Biased Policing

(July 6, 2020) (attaching R. Lucia Ltr. to L. Preston, Re: DGO 5.17 Bias-Free Policing / Meet & Confer (June 25, 2020)), *available at* [https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Memorandum%20-%20DGO%205.17%20Policy%20Prohibiting%20Biased%20Policing%20%2807.06.20%29\\_1.pdf](https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Memorandum%20-%20DGO%205.17%20Policy%20Prohibiting%20Biased%20Policing%20%2807.06.20%29_1.pdf).



bargaining under the MMBA. Sadly, this approach to collective bargaining is the norm, not the exception, even after SFPD claims to have “substantially complied” with Recommendation 3.2, in part by supposedly limiting bargaining to mandatory subjects only.

SFPOA has should not be permitted to slow down the implementation of reforms such as DGO 5.17 by engaging DHR in extended, unauthorized and inappropriate meet-and-confer processes. The Police Commission, the Board of Supervisors, and the Mayor should demand that DHR abide by the Commission’s directive to negotiate only over matters that are mandatory subjects of bargaining. Likewise, the Police Commission should consider seeking independent counsel if the City Attorney continues to misadvise on the parameters of mandatory collective bargaining, thereby enabling inappropriate discussions over management matters. Finally, we note that releasing all meet-and-confer correspondence between DHR and SFPOA, and making the meetings publicly accessible and transparent to key stakeholders will ensure that DHR ceases negotiating matters that are management’s prerogative.

**III. California law requires a good faith effort to discuss working conditions with the union within a reasonable timeframe, but not over extended periods.**

A second problem identified by USDOJ in Recommendation 3.2—and not adequately addressed by SFPD or DHR—has been the unreasonable length of the meet-and-confer process. This problem has stalled numerous reforms. DHR should negotiate reasonable schedules and deadlines with SFPOA for meet-and-confer sessions, and if SFPOA refuses to do so, *DHR must promptly declare impasse on matters rather than indulging in delays.*

DHR has not done so. For example, it met and conferred with SFPOA over DGO 10.11 (BWC) policy, for *nearly two and a half years* over a *single non-binding sentence* after the policy was approved by the Police Commission. In January 2018, the Police Commission adopted changes forbidding officer review of BWC footage in officer-involved shootings and in-custody deaths. Stakeholders have been advocating for such changes since 2016, when the original policy was passed. In a process completely hidden from public view, the revised policy resulting from this meet-and-



confer was not made public until very recently.<sup>11</sup> After years of negotiation, DHR revealed that the change from the meet-and-confer process constituted *one non-binding sentence*. In the meantime, implementation of the restrictions on officer review of BWC footage—a matter implicating public trust in law enforcement that is clearly within management’s prerogative under California law (*see supra*)—was delayed for years. No further changes to the policy could be considered until the existing amendments were finalized. Thus, this basic reform has been unacceptably stalled.

Not only are these delays are not mandated by state law, such an extended process is contrary to the law—particularly as to matters, which implicate public trust in law enforcement. *See Building Materials* 41 Cal. 3d at 660; *Claremont*, 39 Cal. 4th at 638. SFPD’s “Completion Memorandum” states: “Placing arbitrary deadlines on the meet and confer process at the onset of negotiations would be viewed by the courts as bargaining in bad faith.”<sup>12</sup> Placing *arbitrary* deadlines on negotiations might evince bad faith, but adhering to reasonable timelines and seeking negotiated deadlines certainly does not.

The MMBA broadly defines the “good faith” bargaining requirement as follows:

“Meet and confer in good faith” means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule,

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<sup>11</sup> See DGO 10.11 (Eff. 01/10/18) (redline), *available at* <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission100720-DGO10.11BodyWornCamerasback%20from%20m%26c.pdf>.

<sup>12</sup> See Ex. B. SFPD Collaborative Reform Completion Memorandum (March 3, 2020).



regulation, or ordinance, or when such procedures are utilized by mutual consent.

See Gov't Code § 3505. Notably, the statute does not require secrecy, or any specific or extended time frame for negotiations. And, according to the California Supreme Court, conducting the required meet-and-confer in good faith should place a "minimal" burden on the democratic functions of local government. *People ex rel. Seal Beach Police Officers Ass'n v. City of Seal Beach* (1984) 36 Cal. 3d 591, 599.

The courts have interpreted "good faith" to require, from both sides, "a genuine desire to reach agreement. The parties must make a serious attempt to resolve differences and reach a common ground." *Santa Clara Cnty. Corr. Peace Officers' Ass'n, Inc. v. Cty. of Santa Clara* (2014) 224 Cal. App. 4th 1016, 1044. However, "[e]ven if the parties meet and confer, they are not required to reach an agreement because the employer has 'the ultimate power to refuse to agree on any particular issue.'" *Claremont*, 39 Cal. 4th at 630 (quoting *Building Material*, 41 Cal. 3d at 665). Thus, even "adamantly insisting on a position does not necessarily establish bad faith." *Santa Clara Cnty. Corr. Peace Officers' Ass'n*, 224 Cal. App. 4th at 1044 (citing *Public Employees Ass'n v. Bd. of Supervisors* (1985) 167 Cal. App. 3d 797, 805-806).

"The MMBA does not attempt to specify how long or how frequently parties must meet in order to establish prima facie good faith or when impasse may be declared." *Santa Clara Cty. Corr. Peace Officers' Ass'n*, 224 Cal. App. 4th at 1038. The parties, however, are "free to agree in advance on a period of time that they consider reasonable to allow them to freely exchange information and proposals and endeavor to reach agreement." *Id.* at 1038-39 (union agreed to 45-day period following notice).

Notably, California courts have been fairly reluctant to find that public employers have "rushed to impasse" based on the supposed failure to allow sufficient time for bargaining. See, e.g., *Vallejo Police Officers Ass'n v. City of Vallejo* (2017) 15 Cal. App. 5th 601, 628 (rejecting such claim). Although the California Public Employment Relations Board (PERB) has proven more willing to do so, that administrative board's purported jurisdiction over claims of unfair labor practices brought by unions representing peace officers has not been tested in the courts, and in any case, its opinions are also subject to judicial review. See *Ass'n of Orange Cnty Deputy Sheriffs v. Cnty of Orange*, PERB Dec. No. 2657-M (PERB



decision purporting to claim jurisdiction over such claims, a ruling which was not appealed to the courts).

We are aware that DHR's attempt to reduce the *notification period* to SFPOA for USDOJ-recommended reforms that fall within the scope of representation, from 30 to 14 days, was rejected by an arbitration panel in 2018. That limited arbitration decision should not dissuade the City and DHR from pressing for changes to the MOU to implement reasonable timelines and deadlines for the meet-and-confer process. As then-arbitrator Carol Isen wrote in support of that proposal to change the MOU: "I believe the City's proposal strikes a reasonable balance between the City's desire for swift implementation of reform measures recommended by the DOJ and [SFPOA's] right to have a meaningful say over any impacts on its members' terms and conditions of employment with [SFPD]." <sup>13</sup>

*DHR must make it a priority to negotiate timelines that enable the Police Commission to deliver needed reforms.* Deadlines should be set forth in the MOU. *Santa Clara Cty. Corr. Peace Officers' Ass'n*, 224 Cal. App. 4th at 1038-39. If SFPOA refuses to agree to reasonable deadlines, DHR must be prepared to declare impasse on matters where SFPOA delays and evinces bad faith in the meet-and-confer. The City Attorney may caution that doing so could risk litigation, but it is the right thing to do, there is support in the law, and the community expects it.

According to SFPD, in an apparent effort to comply with Recommendation 3.2, DHR has now implemented standing meetings with SFPOA and detailed to SFPD the same negotiator who permitted long delays in prior meet-and-confer processes.<sup>14</sup> Simply scheduling more meetings for collective bargaining, untethered to any particular subject or policy, will not speed the process—especially given that SFPOA has demonstrated its ability to drag out the meet-and-confer process over months and years with DHR's negotiators. Scheduling more standing meetings between DHR and SFPOA does not support a finding that SFPD has "substantially complied" with Recommendation 3.2.

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<sup>13</sup> See *In re: City and Cnty. of San Francisco and SFPOA* (Arb. Award, May 4, 2018) at 23, available at <https://sfdhr.org/sites/default/files/documents/Notices/POA-Final-Award.pdf>.

<sup>14</sup> See Ex. B. SFPD Collaborative Reform Completion Memorandum (March 3, 2020).



Consistent with California law, meet-and-confer meetings concerning reform that matters that fall within the scope of representation should be scheduled quickly, placed on the agenda, focused in scope, and brought to resolution expeditiously. Otherwise, SFPD reform is unnecessarily delayed and the public trust irreparably harmed.

**IV. California law permits a meet-and-confer process that is publicly-accessible and open to stakeholder input; transparency and inclusion measures would improve negotiations.**

DHR's meet-and-confer process with SFPOA occurs behind closed doors. Such secrecy is not legally required and is not the norm across all jurisdictions. Greater transparency would improve the process and advance substantive police reforms.

BASF-CJTF urges the City to adopt the following changes:

- (1) DHR should publicly notice meet-and-confer meetings in advance for public attendance;
- (2) all meet-and-confer correspondence and communications between the parties should be posted publicly in a timely fashion in advance of meetings; and
- (3) DHR should consult with key public agencies and other stakeholders regarding reform objectives, before, during, and after the meet-and-confer process.

Various experts have argued in favor of increasing public participation in bargaining, or at least improving the transparency of such negotiations. Professor Stephen Rushin recently urged policymakers to “make collective bargaining sessions over police disciplinary procedures open to the public,” noting that “[t]he collective bargaining process generally excludes individuals most at risk of experiencing police misconduct.”<sup>15</sup> Not only are communities of color excluded from the process, so are affinity groups within the ranks of SFPD (such as Officers for Justice SF), whose interests may not be well represented by SFPOA. Likewise, key stakeholders, such as the DA's office, DPA, and even the Police

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<sup>15</sup> Stephen Rushin, *Police Union Contracts*, Duke Law Journal vol. 66, no. 6 (March 2017) at 1244-45, available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3890&context=dlj>.





Commission, often have little to no visibility into, much less influence over, the substance or course of meet-and-confer negotiations. Excluding these viewpoints has led to secretive negotiations between DHR and SFPOA that have failed to advance reform objectives—witness the recently negotiated MOU.

San Francisco deserves better. Notably, a number of states (Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oregon, Tennessee, and Texas) already require public employee collective bargaining to occur in open public meetings.<sup>16</sup> In Texas, for example, state law requires that meet-and-confer deliberations between public employers and police unions “shall be open to the public.”<sup>17</sup>

In 2016, community groups and advocates in Austin, Texas, took advantage of these laws to attend meet-and-confer meetings and advocate for reform positions.<sup>18</sup> Those who led the campaign related their experiences recently in *The New York Times*:

[A]lmost every week in 2017, our coalition attended meetings between the city and the police association. [¶] We packed chairs around the periphery of the room, took detailed notes and then cross-referenced every change to the previous contract. Then we’d return to the offices of council members and city negotiators to urge them to support our reforms. [¶] Negotiators from the city told us that our presence changed the dynamics of the bargaining by compelling real dialogue between the city and the association. In previous years, the union had railroaded the city for exorbitant

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<sup>16</sup> See generally Eric Shannon, Washington Policy Center, Policy Brief, *Transparency in public employee collective bargaining: How Washington compares to other states* (December 2018) (“Opening public employee collective bargaining is clearly working in many states in creating more open, honest, and accountable government.”), available at <https://www.washingtonpolicy.org/library/doclib/Shannon-Transparency-in-public-employee-collective-bargaining.pdf>.

<sup>17</sup> See Tex. Local Govt. Code § 174.108, available at [www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm](http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm).

<sup>18</sup> Mark Wilson, “Meet-and-confer negotiations with police ineffective, groups say,” *Austin Statesman*, August 8, 2017 (updated September 25, 2018), available at <https://www.statesman.com/news/20170808/meet-and-confer-negotiations-with-police-ineffective-groups-say>.

pay increases and stipends in exchange for negligible improvements in oversight.<sup>19</sup>

As it turned out, greater transparency and public participation in Austin's meet-and-confer meetings prompted sea changes in an otherwise entrenched system. First, the city council rejected the re-negotiated MOU because it did not include meaningful reforms, and instead sent the negotiators back to the bargaining table; then, after initially backing out, the union relented and replaced its chief negotiator with a representative who was receptive to community input; ultimately, the city council voted to approve a revised MOU that saved the city almost \$40 million and included reform measures.<sup>20</sup> Similar community engagement here in San Francisco could lead to similar dramatic benefits.

Nothing in the MMBA or any other provision of California law requires meet-and-confer discussions to occur behind closed doors, or compels DHR to maintain meet-and-confer correspondence in confidence. *See* 61 Ops. Cal. Atty. Gen. 1, 2-3 (Jan. 4, 1978) (California Attorney General legal opinion noting that the MMBA "is silent as to whether 'meet and confer' sessions may be private, or must be open to the public"). To the contrary, the meet-and-confer sessions are not confidential, and independent summaries of what was discussed at the meetings, as well as the communications between the parties, may be provided to the public as well as other stakeholders.

The Brown Act generally does *not* govern meet-and-confer sessions with unions, unless a quorum of members of the relevant legislative body (such as the Police Commission) attend the bargaining session, thereby triggering the Act's open meeting requirements. *Id.* at 4-5. However, the Brown Act still implicates the transparency of the meet-and-confer process in several ways. First, it limits legislative bodies to conferring in closed session with their bargaining representatives regarding the "salaries, salary schedules, or ... fringe benefits" paid to employees, as well as "any other matter within the statutorily provided scope of representation." *See* Gov't Code § 54957.6(a). Such closed sessions must

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<sup>19</sup> Sukyi McMahon, Chas Moore, "To Reform the Police, Target Their Union Contract" *N.Y. Times*, April 8, 2019, *available at* <https://www.nytimes.com/2019/04/08/opinion/austin-police-union-contract.html>.

<sup>20</sup> *Id.*



be for “the purpose of reviewing [the agency’s] position and instructing the local agency’s designated representatives.” *Id.*; *Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 917 (statutory exceptions permitted closed session must be narrowly construed). Second, the Brown Act does *not* permit legislative bodies to go into closed session to discuss matters that are not subject to bargaining under the MMBA, *i.e.*, beyond of the scope of union representation.<sup>21</sup> (Govt. Code § 54957.6(a).) It is thus inappropriate and contrary to statute for the Police Commission to discuss management issues related to ongoing reforms, in closed session. *San Jose Peace Officer’s Ass’n*, 78 Cal. App. 3d at 947.

Meet-and-confer correspondence between the parties—*i.e.*, opening bargaining offers, counters, and any other communications between the parties—may also be released to the public and other stakeholders. The MMBA is silent as to such communications between the parties, and thus does not prohibit their disclosure. The MOU does not contain any relevant confidentiality provisions. No legal privilege or protection applies to arms-length negotiations.<sup>22</sup> The Brown Act expressly permits legislative bodies to authorize the release of information that is acquired during closed session, *see* Gov’t Code §54963—and, as noted above, the Police Commission has actually exercised this authority fairly recently, to release meet-and-confer communications received from SFPOA regarding DGO 5.17.

The CPRA also permits disclosure of arms-length correspondence between DHR and SFPOA. As SFPD’s “Completion Memorandum” notes, the CPRA exempts from disclosure records “related to activities governed by [the MMBA] that reveal a local agency’s deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy....” Gov’t Code § 6254(p)(2). However, the same provision goes on: “This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee

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<sup>21</sup> BASF-CJTF is very concerned that, in the past, the Police Commission may have discussed in closed sessions with DHR meet-and-confer negotiations “voluntarily” undertaken regarding matters, such as the use-of-force policy, that are not within the scope of representation. This practice must end, as it violates the Brown Act.

<sup>22</sup> Notably, SFPOA has never agreed to maintain confidentiality in its discussions with DHR, and its leadership has not hesitated to speak to the news media about negotiations whenever it deems doing so to be strategically advantageous.



relations act referred to in this paragraph.” *Id.* Here, as with the Brown Act, the statutory exceptions are to be narrowly construed. *Bd. of Trustees of Cal. State Univ. v. Super. Ct.* (2005) 132 Cal. App. 4th 889, 896; *see also* Gov’t Code § 6254(p)(2) (“This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this paragraph.”)

In sum, California law allows greater transparency and inclusion in the meet-and-confer process, and recent experiences in other jurisdictions suggest that opening the meetings and negotiations to the public can advance reform efforts. Indeed, BASF-CJTF’s experience in the USDOJ collaborative reform process has consistently taught that greater transparency and community participation in police policymaking improves outcomes, advances reforms, and reinforces public trust in law enforcement.

### **Conclusion**

We know the Board of Supervisors and Police Commission remain committed to timely and meaningful reform of SFPD, including the relationship between the City and SFPOA. As the recent national demonstrations and calls for police reform reveal, the stakes for San Francisco could not be greater. We stand in partnership with the Board of Supervisors, the Police Commission, the SFPD, and the City to achieve our shared goals for police reform.

Sincerely,

Stuart Plunkett  
President, Bar Association of San Francisco



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# Exhibit A

**From:** [Kilshaw, Rachael \(POL\)](#)  
**To:** [SFPD, Commission \(POL\)](#)  
**Cc:** [Youngblood, Stacy \(POL\)](#); [Lohaus, Phillip \(POL\)](#); [CABRERA, ALICIA \(CAT\)](#); [Preston, Darryelle \(POL\)](#)  
**Subject:** protocols when receiving DGOs/policies for Commission adoption  
**Date:** Tuesday, July 7, 2020 12:59:44 PM  
**Attachments:** [proceess for handling DGOs.doc](#)  
[Hirsh letter.pdf](#)  
[response to 3.2.pdf](#)

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Dear Commissioners:

During last week's meeting there was a request to calendar a discussion about the process of how and why DGOs/policies are handled with respect to the meet and confer process. The Commission office can provide some information about the process at this time.

In 2016 the US DOJ recommended that the "SFPD work with the Police Commission to obtain input from the stakeholder group and conduct an after-action review of the meet and confer process to identify ways to improve input and expedite the process in the future for other policy development." (rec 3.2) To address one part of the recommendation the Commission President Hirsch and members of the Commission staff worked with the SFPD, the City Attorney's Office ("CAO") and the Department of Human Resources ("DHR") to develop protocols for the handling of DGOs/policies when received from the SFPD. The internal protocols were developed in 2018 and revised in 2019. I have attached a copy of the current Protocols for your review (first attachment).

In 2018 then Commission President Hirsch instructed DHR in closed session to only meet and confer over mandatory subjects of bargaining. Commission President Hirsh memorialized this directive in a letter to the SFPD. (second attachment)

In 2020, Commission staff submitted the cover letter to Hillard Heintz regarding recommendation 3.2 outlining the steps the SFPD, the Commission, DHR and the CAO have taken to expedite the meet and confer process. It provides additional information about the steps taken to expedite meet and confer. I have attached that letter for your review (third attachment). Recommendation 3.2 achieved substantial compliance in May 2020.

Regarding the status of outstanding policies still in meet and confer, there are 5:

- DGO 5.17
- Protocols for in person disciplinary hearings
- BWC policy
- Disciplinary Matrix
- SB 1421 protocols

The Commission staff tracks the items in meet and confer and routinely asks DHR (now Ms. Preston) and/or CAO about the status.

Of the 5 items in meet and confer, you will be addressing 4 in closed session on Wednesday. Contrary to public statements, the Commission Office has not been notified that meet and confer has concluded on the BWC policy, which is why the Commission will be provided an update in closed session. As you can see in attachment #1, once DHR, (now Ms. Preston – SFPD Director of Labor

Relations and DHR Liaison) concludes the meet and confer process, they notify the Commission Office and request that the item be placed on the agenda for adoption in open session. That notification has not happened.

I know this information only explains the “how” part of your questions regarding policies getting to meet and confer. The Commission staff will defer to DHR, CAO or Ms. Preston to explain the “why” each policy is identified for meet and confer.

Please let me know if you have any questions.

Rachael

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# Exhibit B



## **Collaborative Reform Completion Memorandum**

**Finding # 3:** The SFPD and the Police Commission collaboratively worked with community stakeholders to update Department General Order 5.01 - Use of Force policy.

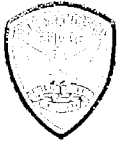
**Recommendation # 3.2** The SFPD should work with the Police Commission to obtain input from the stakeholder group and conduct an after-action review of the meet and confer process to identify ways to improve input and expedite the process in the future for other policy development.

**Response Date: March 3, 2020**

**Executive Summary:** Department General Order 5.01 had last been revised in 1995. In late 2015 the Police Commission ("Commission") directed the San Francisco Police Department ("Department") to present a revised Use of Force policy to the Commission for adoption no later than February 2016. The Commission convened a working group and identified various stakeholders that included Department members, members of community-based organizations, members of the community and members of other City agencies for the purpose of developing an updated Use of Force policy. The process to revise DGO 5.01 began on December 9, 2015. Members of the working group felt the February 2016 deadline was arbitrary and did not allow enough time to develop a Use of Force policy and requested that the meetings continue past the Commission's due date of February 2016. The Commission agreed to the request, and the working group completed the draft policy in June 2016. During the seven-month period the group developed two versions of a Use of Force policy that reflected policy enhancements, and included recommendations from the Final Report of the President's Task Force on 21st Century Policing, the Police Executive Research Forum, and the U.S. DOJ-COPs Office. On June 22, 2016 the Department presented the two policies to the Commission, at which time the Commission voted to approve one version of the Use of Force policy for the purposes of engaging in the "meet and confer" process with the San Francisco Police Officers' Association ("POA"), as required by California Government Code § 3500 et seq., also known as the Meyers-Milias-Brown Act ("MMBA").

The MMBA requires public agencies to provide notice to recognized employee organizations, and upon request, to meet with them over changes on matters within the scope of representation before implementing the changes. The MMBA excludes from the meet and confer obligation fundamental managerial decisions addressing the merits, necessity, or organization of any service or activity provided by law or executive order ("managerial decisions"). However, the MMBA does require the agency to meet and confer over the impact of managerial decision on employees ("effects bargaining") before implementing managerial decisions. The San Francisco Charter ("Charter") and the Memorandum of Understanding between the City and the POA ("MOU") impose equivalent meet and confer obligations.

The Charter authorizes the Commission to adopt rules and regulations, and other policies, procedures and Department General Orders (collectively, "DGOs"), governing the Department. (Charter § 4.104.) Managerial decisions are not subject to meet and



## **Collaborative Reform Completion Memorandum**

confer. However, even in those instances where the decision is squarely a managerial prerogative, those decisions may have effects – for example on employee training and discipline – that are subject to meet and confer. Accordingly, under the MMBA, Charter and MOU, the City as the public employer must engage in effects bargaining with the POA before implementing a managerial decision. As the policy decision maker on all DGOs, the Commission has an essential role in that meet and confer process, working with the City's Department of Human Resources ("DHR") on the negotiations. That process cannot end until the City completes the effects bargaining. Placing arbitrary deadlines on the meet and confer process at the onset of negotiations would be viewed by the courts as bargaining in bad faith.

### **Compliance Measures:**

#### **1) Work with the Police Commission.**

The Department worked with members of the Commission staff to develop a survey (see exhibit 1 – survey to Use of Force stakeholders) to send to various members of the community, members of community-based organizations, and members of other City agencies to obtain input on ways to improve input into policy development and expedite the meet and confer process for future policy development. While the questions were about the process for the Use of Force policy, they were purposely broad so the answers could be used to improve the process for future policy development.

The following questions were developed by the Department and the Commission staff and were included in the survey:

- 1) What did you value about the re-engineering of [Use of Force] DGO 5.01 and what areas could be improved?
- 2) Re-engineering the Use of Force policy was a lengthy process. Can you suggest ways to expedite this process in the future?
- 3) In reference to DGO 5.01, the SFPD sought input via stakeholder and Police Commission meetings. How else can we encourage thoughtful input?
- 4) Any additional thoughts and comments as we continue to improve policies and related negotiations are conducted.

#### **2) Obtain input from all relevant stakeholder groups.**

On July 17, 2017, the above referenced survey was sent via email to approximately 20 members of the Use of Force working group (see exhibit 2 – list of working group members who received survey and July 17, 2017 email to working group members with survey attached). While these members worked on the Use of Force policy, many who received the survey have been members of other Department/Commission working groups that developed other Department General Orders – both before and after the Use of Force working group. The survey was sent to:

Joyce Hicks\*  
Samara Marion\*  
Marty Halloran\*  
Teresa Ewins\*

Director of the Department of Police Accountability  
Policy Director at the Department of Police Accountability  
President SFPOA  
President Pride Alliance



## **Collaborative Reform Completion Memorandum**

Mark Marquez*	Latin Police Officers Association
Yulanda Williams	President of the Officers for Justice
Brian Kneuker*	Asian Police Officers Association
LaWanna Preston	Department of Human Resources
Michael Ulrich	Department of Human Resources
Sheryl Davis*	Director of the Human Rights Commission
Jennifer Friedenbach*	Director of the Coalition on Homelessness
Jeff Adachi*	Public Defender
Rebecca Young*	Assistant Public Defender
Sharon Woo*	Assistant District Attorney
Colin West	Blue Ribbon Panel
Kevin Benedicto*	Blue Ribbon Panel
Terri Boher*	CIT working group
Julie Traun*	Bar Association of San Francisco
Alan Schlosser*	ACLU
Cecile O'Connor	CIT working group

\*in addition to working on the Use of Force policy, these individuals have worked on additional policy development working groups (either before or after the UOF working group, or both)

On July 31, 2017 the Department sent a reminder email (see exhibit 3 – follow up email to stakeholders) to the recipients asking for a response to the survey.

The Department received four responses – the POA, the DPA, the Coalition on Homelessness and the San Francisco Bar Association. In addition, although the ACLU – Northern California did not send in a response to the July 17, 2017 or the July 31, 2017 request to complete the survey, it had submitted a February 29, 2016 letter to the Police Commission during the Use of Force working group process that includes recommendations regarding the meet and confer process. The ACLU's letter is included in this response. (See exhibit 4 – responses from POA, DPA, Coalition on Homelessness, San Francisco Bar Association, and ACLU – Northern California)

### **3) Conduct an after-action review of the meet-and-confer process.**

The Commission and the Department conducted an after-action review of the meet and confer process:

- A. Both agencies reviewed the responses to the survey questions and the February 29, 2016 letter (see again exhibit 4 – responses from POA, DPA, Coalition on Homelessness, San Francisco Bar Association, and ACLU – Northern California) about the meet and confer process. The suggestions included:
- The POA recommended 1) the Department have a final decision maker with the authority to agree to proposals present during all negotiations, 2) the Department should engage with the POA on early drafts of policy revisions before presenting a draft of the policy to the working group, 3) the Department should revise its policies on a more

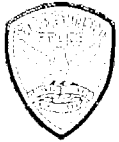


## **Collaborative Reform Completion Memorandum**

frequent schedule and not wait two decades, and 4) the Police Commission should comply with MMBA by fulfilling its duty to meet and confer in good faith.

- The DPA recommended 1) that all meet and confer issues are identified before discussions begin, 2) reasonable timelines are adhered to, and 3) "more collaboration and strategy be committed to how the new policy and training are rolled out so that reasons for the changes and the officers' concerns are addressed in a manner that advances and not undermines reforms."
- The Coalition on Homelessness did not have any specific recommendations but stated that in their opinion the POA's decision to claim labor issues in meet and confer was an incorrect assessment.
- The San Francisco Bar Association recommended 1) that the POA not have such a large and prominent role in the policy drafting because it is unfair that they will have another opportunity during meet and confer, 2) the role of DHR needs to be revisited, and there needs to be a bright line between policy and working conditions, and not negotiate over non-work related conditions, and 3) there needs to be more clarity on the definition of "working conditions," which is too broadly defined.
- The ACLU recommended that the Commission clarify 1) whether fundamental policy decisions are a mandatory subject of bargaining under MMBA, and if not, clarify if the City voluntarily agrees to meet and confer under these circumstances, 2) the scope of the matters discussed in meet and confer and the procedures when there is an impasse, and 3) whether, through the meet and confer process, the policies approved by the Commission are subject to revision once in the meet and confer process.

- B. With the Use of Force process and the survey responses in mind, the Commission met with members of DHR and the City Attorney's Office ("CAO") on June 13, 2018 in a closed session meeting to discuss ways to expedite the meet and confer process within the provisions of the MMBA, the City Charter and the MOU. The Commission and the Department are not able to release the minutes or the audio recording from closed session item 7a as the Commission voted in item 8 not to disclose any portion of the closed session meeting pursuant to San Francisco Administrative Code section 67.12. (See exhibit 5 – agenda including closed session item 7a and open session item 8 from the June 13, 2018 Commission meeting, and language from San Francisco Administrative Code 67.12 (a)).
- C. On June 28, 2018 members of the SFPD, the Commission staff and a member of DHR met (see exhibit 6 – calendar invite to meeting and agenda) to discuss ways to streamline the process of 1) providing draft DGOs to DHR, 2) DHR providing an opinion on whether the draft DGO is subject to meet and confer or whether the DGO can be placed on the Commission agenda for adoption without meet and confer, and 3) DHR conducting the meet and confer with the POA.
- D. In a series of emails from December 11, 2019 through January 2, 2020, members of the Department, DHR and the POA discussed scheduling regular meetings (see exhibit 7 – emails among SFPD, DHR and POA) to ensure meet and confer negotiations among the three parties are consistent and regularly scheduled.



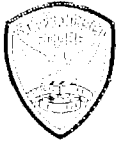
## **Collaborative Reform Completion Memorandum**

The Department and the Commission considered all the recommendations from the stakeholders and were able to implement many of them. Others recommendations were not implemented. For example, not allowing the POA to have a "large and prominent role in the policy drafting because it is unfair that they will have another opportunity during meet and confer" was not implemented. The POA and other employee groups are welcome to attend any working group meeting, as are all members of the public.

### **4) Identify ways to improve input and expedite the process in the future for other policy development and implementation.**

Based on the after-action review and discussions, DHR, the Department and the Commission have done the following in an attempt to expedite the meet and confer process for future DGOs:

1. The Commission has instructed DHR to meet and confer only over mandatory subjects of bargaining. (See exhibit 8 – letter from Commission President Hirsch to Commander Walsh).
2. The Commission staff, the Department and DHR developed a process in an attempt to streamline the meet and confer timeline: 1) The Commission staff providing DHR/CAO a copy of the draft DGO prior to the DGO being placed on the agenda so DHR/CAO can provide an opinion on whether the draft DGO is subject to meet and confer, 2) providing DHR with an "order of priority" list of DGOs when they are sent to DHR for meet and confer, and 3) providing the Department's training plan, if available, to DHR along with the DGO for inclusion in the discussions during meet and confer. The group developed the following protocols (see exhibit 9 - Police Commission Protocols for DGOs):
  - Once the Police Commission Secretary receives a draft DGO from Written Directives requesting it be calendared on the Commission agenda, the Police Commission Secretary emails the draft DGO to a designated DHR representative, with a courtesy copy to a designated Deputy City Attorney ("DCA"), asking for an opinion on whether the draft DGO as written is subject to meet and confer. The DHR representative or the DCA provides an opinion on whether the DGO is subject to meet and confer. These emails are subject to the attorney client privilege, and the official information privilege (California Evidence Code 1040) outlined in the MOU between the CAL DOJ, the Department, and the Commission will not protect the attorney client privilege, which would be waived upon the release of these emails. However, this procedure is outlined in step 4 of the Police Commission Protocols for DGOs. (see again exhibit 9 – Police Commission Protocols for DGOs, step #4)
  - If DHR/DCA opines that the DGO is **not subject** to meet and confer, the Police Commission Secretary posts the DGO for members of the public for at least 10 days prior to the Commission voting on the DGO, and places the DGO on the agenda as "Discussion and possible action for adoption of DGO XX.XX." (See exhibit 10 –



## Collaborative Reform Completion Memorandum

examples of agendas with DGOs with no need for meet and confer.) The DGO is effective the date of the Commission vote.

- If DHR/DCA opines that the DGO **is subject** to meet and confer, the Police Commission Secretary posts the DGO for members of the public for at least 10 days, and places the DGO on the agenda as "Discussion and possible action to approve revised Department General Order XX.XX for purposes of engaging in the meet-and-confer process with the Police Officers Association, as required by law." (See exhibit 11 – examples of agendas DGOs with a need for meet and confer.) The DGO is not effective until after meet and confer is finalized.
  - After the vote to approve a DGO for meet and confer, the Police Commission Secretary emails the draft DGO along with the training plan, if available, to a designated DHR representative, with a courtesy copy to a designated DCA, directing DHR to begin negotiations and notify the Police Commission staff when negotiations are complete, or in the alternative, advise if they need direction in a closed session meeting from the Commission during negotiations. (see exhibit 12 – samples of emails to DHR with the DGO for meet and confer.)
  - DHR has requested that the Commission prioritize the DGOs in order of importance.
  - The Commission staff requests quarterly status updates from DHR on the progress of the DGOs in the meet and confer process. (see exhibit 13 – samples of emails to DHR asking for status updates)
  - Once DHR notifies the Commission staff that the negotiations have concluded and provides the Office with the final version for the Commission to vote on, the Police Commission Secretary posts the DGO for members of the public for at least 10 days, and places the DGO on the agenda as "Discussion and possible action to adopt revised Department General Order XX.XX." (see exhibit 14 – examples of agendas with DGOs that had been subject to meet and confer being placed on the agenda for a vote to adopt.) The DGO is effective the date of the Commission vote.
3. The Department, DHR and the POA have a standing four-hour meeting each month (see exhibit 15 – Chief's calendar with scheduled meetings) dedicated to conducting negotiations on DGOs that are subject to meet and confer. The agendas for the February 2020 and the March 2020 meetings are attached. (see exhibit 16 – agendas for the February 25, 2020, March 11, 2020 and March 16, 2020 meetings and email from DHR regarding agenda setting). DHR has explained that the agendas for upcoming meetings are set at the end of each meeting. To date, the agenda has been set for the upcoming March 11, 2020 and March 16, 2020 meetings, and no agendas for meetings after that date have been set. There are no official minutes taken for meet and confer meetings. The Department does not maintain any notes from the meet and confer sessions. DHR does take bargaining notes which are privileged and not subject to release pursuant to Government Code 6254(p)(2). DHR holds the privilege and declines to release the bargaining notes to the Department or the Commission. (see exhibit 17 – language from Government Code 6254(p)(2)).

# Exhibit C





# The Police Commission

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CITY AND COUNTY OF SAN FRANCISCO

ROBERT HIRSCH  
President

June 19, 2019

Commander Peter Walsh  
San Francisco Police Department  
1245 3<sup>rd</sup> Street, 4<sup>th</sup> Floor  
San Francisco, CA 94158

*Re: U.S. Department of Justice Recommendation 3.2*

Dear Commander Walsh:

The Commission has previously instructed the City and County of San Francisco's Department of Human Resources, the City's bargaining representative, to only meet and confer over mandatory subjects of bargaining.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Hirsch", is written over a horizontal line.

Robert Hirsch  
President  
San Francisco Police Commission