

Promotional Memorandum of Agreement

City of San José

and

San José Police Officers' Association



January 1, 2017 – June 30, 2020

**PROMOTIONAL MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
&
THE SAN JOSE POLICE OFFICERS' ASSOCIATION**

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The Memorandum of Agreement for Promotions hereinafter referred to as the "Agreement" is established by agreement at San José, California, this 12th day of January, 2017 by and between the City of San José, California, hereinafter referred to as the "City" and the San José Police Officers' Association, hereinafter referred to as the Employee Association or "Association." This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, including grievance settlements and arbitration decisions interpreting those understandings, are hereby superseded and terminated in their entirety. The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown-Act."

ARTICLE 1 TERM

This Promotions Memorandum of Agreement shall become effective January 1, 2017, except where otherwise provided, and shall remain in effect through June 30, 2020. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

ARTICLE 2 NON-DISCRIMINATION

The Parties agree that they and each of them shall not discriminate with respect to promotions against any employee or organization member in accordance with the City of San Jose Discrimination and Harassment policy, Section 1.1.1 of the City Policy Manual and/or any applicable State or Federal laws.

ARTICLE 3 ELIGIBILITY

- 3.1 To qualify for an examination for Police Sergeant, an individual must have at least three (3) years experience as a Police Officer for the City of San Jose.
- 3.2 To qualify for an examination for Police Lieutenant, an individual must have at least two (2) years experience as a Police Sergeant for the City of San Jose.
- 3.3 To qualify for an examination for Police Captain, an individual must have at least two (2) years experience as a Police Lieutenant for the City of San Jose.
- 3.4 To qualify for an examination for Deputy Chief of Police, an individual must currently hold the position of Police Captain and have at least two (2) years experience as a Police Lieutenant for the City of San Jose.
- 3.5 Please note that there may also be minimum education requirements for certain positions that are included in the Classification Specifications.

ARTICLE 4 EXAMINATION NOTIFICATIONS

- 4.1 Public notice of upcoming test shall be posted no later than sixty (60) days before test date.

- 4.2 There shall be no extension of the applicant filing date or test date unless announced to all potential candidates.
- 4.3 The City shall provide, no less than one time every calendar year, a promotional counseling session available to all Police Officers seeking advice on how best to prepare for their specific promotional testing process. Officers may participate on their own time.

ARTICLE 5 EXAMINATIONS

- 5.1 Booklets containing test questions shall be officially numbered in sequence with test answer sheets containing the same number. Candidates taking an exam shall be given a test booklet and answer sheet identified with identical numbers.
- 5.2 All questions used in all written examinations shall have their source listed in parenthesis under questions on exams.
- 5.3 With respect to Sergeant and Lieutenant examinations, questions on the written examination will be based upon the content of the departmental reading list if a written examination is given as part of that promotion process.
- 5.4 The weights of the Sergeant and Lieutenant examinations will be 40% written examination and 60% oral examination. The oral examination will include a writing exercise component, and the weight of the writing exercise component will vary from test to test depending on the job analysis conducted by the City's consultant.
- 5.5 The City may use more than one oral board for an examination.
- 5.6 The use of audio-taping or videotaping may be implemented in the "Oral" portion of an examination. If any candidate is recorded, all candidates shall be similarly recorded; that is, there shall be uniformity in the process. In addition, there shall be four (4) week written notice to all candidates of such recordation. Notice of taping/recordation in the exam announcement shall suffice.
- 5.7 The Sergeant and Lieutenant oral boards should represent the diversity of the workforce. If the oral board elected through the participants' voting process fails to do so, the Chief may elect to appoint an extra member of each board. In that event, the Sergeant boards will have a maximum of five (5) raters and the Lieutenant boards will have a maximum of four (4) raters.
- 5.8 The Sergeant and Lieutenant oral board will include a representative from the Office of Employee Relations or the Human Resources Department as an observer.
- 5.9 For oral board rater selection for promotional examinations for Sergeants and Lieutenants, the examinees shall elect two raters from Lieutenants and/or Captains in the San Jose Police Department and the Director of Human Resources shall appoint two additional raters whom can be any persons who he/she deems appropriate.
- 5.10 For examinations for Sergeant, Lieutenant and Captain, an observer designated by the Association, who is not an employee of the City of San Jose, may be present during pre-

examination training of oral board members, the oral board itself and discussion by oral board raters, if any, to coordinate their scores.

- 5.10.1 The observer shall report to the City and the Police Officers' Association examination process irregularities, if any, which appear to be a violation of the City of San Jose Harassment and Discrimination policy and/or other applicable State and/or Federal laws. To do so, the observer first reports such perceived irregularities to the examination administrator designated by the City by the conclusion of the examination phase in which the alleged irregularity occurs. If that concern continues, the observer shall promptly report the concern to the Office of Employee Relations.
 - 5.10.2 If no irregularity is presented by the end of an examination phase, the observer may not raise an issue solely related to that examination phase at any later time with respect to discrimination. The observer shall not be concerned with or report on the content of an examination. With respect to oral examinations in which there are exercises that are being carried out simultaneously among different examinees, and if the observer cannot watch more than one such exercise without disrupting it, then the observer will watch but one exercise at a time.
 - 5.10.3 The observer shall not talk, disrupt, provide clues to any candidate or rater during the examination process, interrupt proceedings in progress or otherwise disrupt the examination process. The observer shall at all times protect the confidentiality of the examination content and candidates' performance except with regard to reports to the parties herein.
 - 5.10.4 The observer at the conclusion of the examination process will make a report concerning the examination, and any recommendations the observer may have, jointly to the City and to the Association.
 - 5.10.5 The Association will arrange for the presence of its selected observer, including payment, if any is required. The schedule for the examination will not be affected by the ability or inability of the observer to be present.
- 5.11 Field Training Officer (FTO) incentive points shall be added to the final score of the Sergeant and Lieutenant promotional examination. Officers shall receive one-half (0.5) point for each year of continuous service as an FTO, for a maximum not to exceed one and one-half points (1.5).

ARTICLE 6 EXAMINATION PROTESTS

- 6.1 During the protest period of seven (7) calendar days, candidates may view a keyed copy of the test booklet. (Candidates will be allowed an initial key review of two (2) hours by the Wednesday following a Saturday written test. Additional time will be provided as requested within the seven-day period during normal office hours.)
- 6.2 Protest Review Meeting (Optional)

- 6.2.1 The Human Resources Director or designee will discuss protests with all interested candidates. The Human Resources Director or designee will indicate a tentative resolution at the Protest Review Meeting.
- 6.2.2 The Human Resources Director or designee shall prepare a letter to each candidate indicating the Human Resources Director's determination. Candidates have five (5) business days to appeal in writing to the Civil Service Commission.
- 6.2.3 All appeals must be filed in writing, within five (5) business days of receipt of the letter from Human Resources.
- 6.2.4 City Clerk will notify appellant of the date, time and place of the meeting. The meeting will be held within ten (10) calendar days of the final day an appeal may be filed.

ARTICLE 7 PROMOTIONAL SELECTIONS

- 7.1 Promotion lists shall be maintained for two (2) years. At the discretion of the Director of Human Resources the life of a list may be extended for an additional year.
- 7.2 The Director of Human Resources shall make every reasonable effort with respect to Sergeant and Lieutenant list(s) to provide a new list within 90 days of the exhaustion or expiration of the Sergeant and/or Lieutenant list(s).
- 7.3 The "Rule of 10" will apply in all promotions.
- 7.4 For the purposes of seniority, points added to test scores for placement on all Police promotional eligible lists, seniority points will be based solely on time in the qualifying grade.
- 7.5 In the event that a person on a list is passed over for the second certification off that same list, in that someone listed below that person was appointed instead of the individual, then the person shall, on request, meet with the Chief or designee to discuss the specifics as to why the individual was passed over, and to receive suggestions as to what the individual can do that will enhance his or her chances for future promotion selection.

ARTICLE 8 DISPUTES

Any disputes concerning the interpretation or application of this agreement shall be resolved by the grievance procedures set forth in the Memorandum of Agreement between the City of San José and San José Police Officers' Association.

ARTICLE 9 PROBATIONARY PERIODS

For those persons promoted to the rank of Sergeant or above, the probationary period will be twelve (12) months.

THIS AGREEMENT executed on the 12th day of January, 2017, between the City of San Jose and the San Jose Police Officers' Association, in WITNESS thereof, the appropriate representative if the parties have affixed their signature thereto.

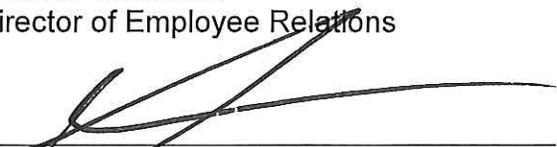
For the City of San Jose:



Norberto Dueñas
City Manager



Jennifer Schembri
Director of Employee Relations



Edgardo Garcia
Chief of Police

**For the San Jose
Police Officers' Association:**



Paul Kelly
President, SJPOA



Gregg McLean Adam
Carroll, Burdick & McDonough LLP