

RESOLUTION NO. 16-20

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON RATIFYING THE MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN AND THE ATHERTON POLICE OFFICERS ASSOCIATION FOR THE
PERIOD COMMENCING OCTOBER 1, 2016 THROUGH JUNE 30, 2019**

WHEREAS, the City Manager, representing the Town, has met and conferred with the Atherton Police Officers Association; and

WHEREAS, the Atherton Police Officers Association and the Town have reached a tentative agreement, the tenants of which are embodied in the attached Memorandum of Understanding for the period of October 1, 2016 through June 30, 2019;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the Town of Atherton that the Memorandum of Understanding attached hereto is hereby ratified and the City Manager is authorized and directed to sign said memorandum on behalf of the Town.

PASSED AND ADOPTED at a meeting of the City Council of the Town of Atherton held on the September 21, 2016 by the following vote:

AYES: 4	Council Members: Lewis, Lempres, Wiest, DeGolia
NOES: 0	Council Members:
ABSTAIN: 1	Council Members: Widmer

Elizabeth Lewis, Mayor
Town of Atherton

ATTEST:

Theresa N. DellaSanta, City Clerk

APPROVED AS TO FORM:

William B. Connors, City Attorney

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE TOWN OF ATHERTON

AND

THE ATHERTON POLICE OFFICERS' ASSOCIATION

FOR THE PERIOD OCTOBER 1, 2016 THROUGH JUNE 30, 2019

This Memorandum of Understanding (hereinafter referred to as "MOU") is made this _____ day of _____, 2016, by the Town of Atherton (hereinafter "Town" or "Employer"), and the Atherton Police Officers' Association (hereinafter "Association" or "Employee Organization"). The use of the terms "Memorandum of Understanding," "MOU," and "Agreement" is to be construed to mean the same as the term "Memorandum of Understanding" contained in Section 3505.1 of the California Government Code, commonly known as the Meyers-Milias-Brown Act.

**ARTICLE I
TERM OF MEMORANDUM**

Section 1: Term

The term of this MOU shall be for the period October 1, 2016 through June 30, 2019. This MOU shall apply to employees within job classifications covered by this MOU and in the Town's active employment on the effective date of this MOU and for the duration thereafter.

Either party may, not more than 360 days nor less than 180 days prior to the expiration of this MOU, request that the provisions of this MOU be reopened. Upon mutual agreement of the parties, each party may present no more than three proposals, excluding proposals to modify the MOU term. In the absence of the exercise of this reopener option by the parties, or a failure to reach agreement on reopener proposals not less than 90 days before the expiration of this MOU, the parties shall commence to negotiate for a successor MOU.

ARTICLE II RECOGNITION & RIGHTS

Section 1: Recognition

Pursuant to Ordinance Number 377 of the Town of Atherton, and provisions of the applicable state law, the Atherton Police Officers' Association is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in this MOU. The classifications listed in this MOU and subsequent additions thereto or deletions therefrom shall constitute appropriate units.

Section 2: P.O.A. Rights

A. Use of Town Facilities

The Employee Organization shall have the right to reasonable use of Town facilities with the prior consent of the City Manager or the Chief of Police. Consent for the reasonable use of Town facilities will be given, if it does not interfere with the regular business of the Town.

B. Dues Deductions

The Town may deduct Employee Organization membership dues or insurance fees and any other mutually agreed upon payroll deduction from the payroll of Employee Organization members. The deductions must be authorized in writing by the Employee Organization member in a manner acceptable to the Town and Employee Organization. The Town shall remit any authorized deductions to the Employee Organization as soon as possible after deduction.

The Employee Organization shall indemnify and hold harmless the Town from any damage, liability, cost, or attorneys' fees in the event of any action in which the Town is named as a party, which action involves the implementation or maintenance of dues deduction, the use of dues after deduction, negligence of the Employee Organization regarding said dues or any similar claim.

Section 3: Town Rights

The Town hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws of the Constitution of the State of California, and of the United States, including but not limiting the generality of the foregoing, the right:

- To set standards and levels of service;
- To determine the procedures and standards of selection for employment;
- To assign work to and direct its employees;
- To determine the methods and means to relieve its employees from duty because of lack of funds or other lawful reasons;

- To determine the methods, means and numbers and kinds of personnel by which Town operations are to be conducted, including the right to contract or subcontract bargaining unit work provided that the Town will meet and confer in advance;
- To determine methods of financing;
- To determine size and composition of the work force and allocate and assign work by which the Town operations are to be conducted;
- To determine and change the number of locations, relocations, and types of operations, processes and materials to be used in carrying out all Town functions;
- To make all decisions relating to merit, necessity or organization of Town service;
- To discharge, suspend, demote, reprimand, or otherwise discipline employees for just cause in accordance with applicable laws;
- To establish employees performance standards including, but not limited to, quality and standards, and to require compliance therewith;
- To take necessary actions to carry out its mission in emergencies; and
- To exercise complete control and discretion over its organization and the technology of performing its work.

The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Town, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Memorandum and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the United States and the Constitution and laws of the State of California.

The exercise by the Town through its Council and Town representatives of its rights hereunder shall not in any way, directly or indirectly, be subject to any grievance procedure nor subject to meeting and conferring.

Nothing herein shall be deemed as a waiver by the Atherton Police Officer's Association or its Members of rights granted under Meyers-Milias-Brown Act (Government Code Sections 3500-3511, as amended) or the Public Safety Officer's Procedural Bill of Rights (Government Code Sections 3300 et seq.).

ARTICLE III AUTHORIZED AGENTS

For the express purpose of administering the terms and provisions of this MOU:

- A. Town's principal authorized agent shall be the City Manager or the City Manager's designee; (address: 91 Ashfield Road, Atherton, CA 94027; telephone: (650) 752-0504), except where a particular Town representative is specifically designated in the MOU.
- B. The Atherton Police Officers Association principal authorized agent shall be the Association's President; or the President's designee; (address: 2421 Broadway Street, Redwood City, CA 94063), except where a particular Association representative is specifically designated in the MOU.

**ARTICLE IV
PURPOSE**

The purpose of this MOU is to promote and provide harmonious relations, cooperation and understanding between the Town and the Employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this MOU, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding wages, hours and other terms and conditions of employment of the employees represented by the Atherton Police Officers' Association.

**ARTICLE V
SALARY AND BENEFITS**

Section 1: Classifications covered by this MOU

A. The following position classifications are covered by this MOU:

- a. Non-sworn Classifications
 - i. Police Dispatcher
 - ii. Community Service Officer
 - iii. Community Service Officer/Code Enforcement Officer
 - iv. Police Trainee
- b. Sworn Classifications
 - i. Police Officer
 - ii. Police Sergeant

Section 2: Salary

A. The salary schedules for the covered classifications within the police department are set by separate resolution adopted by the City Council.

B. Monthly salary ranges for employees covered by this MOU shall be increased on the first pay period that begins on or after the dates below as follows:

- a. October 1, 2016 - 4% for sworn classifications and 3% for non-sworn classifications
- b. July 1, 2017 - 3.75% for sworn classifications and 2.75% for non-sworn classifications
- c. July 1, 2018 - 3.75% for sworn and non-sworn classifications

C. Employees may progress from Step A to Step B six (6) months after their hire date or date of entry into the job classification provided they have received a satisfactory performance evaluation conducted by the Town. Employees may progress from Step B to Step C twelve (12) months after the date of entry into Step B, provided they have received a satisfactory performance evaluation conducted by the Town. Employees may progress to Steps D on the anniversary date following their entry into Step C. Progression to Step D is based upon such factors as experience, certifications, etc., and a satisfactory performance evaluation

conducted by the Town. Progression between Steps is not automatic, but depends upon an evaluation of performance.

- D. Changes between ranges and/or steps shall be made at the beginning of the pay period immediately following the employee's anniversary date.
- E. Sergeants exercise supervisory responsibilities and are considered supervisory employees within the meaning of the Town's municipal code and State and Federal laws.

The Association and the Town agree that the Town will conduct a compensation survey at least 90 days prior to the termination of this MOU utilizing the following benchmark agencies: Palo Alto, Redwood City, Menlo Park, San Mateo County Sheriff s Department, Hillsborough, Los Gatos, Belmont, Brisbane, San Bruno, and Los Altos. The "compensation" used for this comparison includes base salary, assignment pay, the value of CalPERS EPMC (employer paid member contribution), and the employer cost of the following benefits: health, vision, dental, clothing, deferred compensation, life insurance, LTD, career incentive, and holiday pay, as reported by the Employee Relations Service on their Web Site of municipal compensation for Bay Area cities. The resulting data shall be utilized for informational purposes only.

Section 3: P.O.S.T. Certificate

Any Officer or Sergeant receiving an Intermediate P.O.S.T. certificate shall receive an incentive of five percent (5.0%) in wages above the base salary. Any Officer or Sergeant receiving an Advanced P.O.S.T. certificate shall receive an incentive of seven and one half percent (7.5%) in wages above the base salary. The maximum P.O.S.T. incentive for an Officer or Sergeant is seven and one half percent (7.5%) above base salary.

Any Dispatcher or Community Service Officer receiving an Intermediate P.O.S.T. certificate shall receive an incentive of three and one quarter percent (3.25%) in wages above the base salary. Any Dispatcher or Community Service Officer receiving an Advanced P.O.S.T. certificate shall receive an incentive of five percent (5.0%) in wages above the base salary. The maximum P.O.S.T. incentive for any Dispatcher or Community Service Officer is five percent (5.0%) above base salary.

Section 4: Per Diem Expense

The Town shall provide suitable lodging or reimburse expenses incurred pursuant to current P.O.S.T reimbursement rates for employees assigned to mutual aid, riot or civil demonstrations, or training where employees are required to remain overnight. The Town shall provide meals or reimburse for meals pursuant to current reimbursement rates for employees assigned to mutual aid and/or training. These reimbursements shall be consistent with the Town's Human Resources Policies and Procedures – Policy #212.

Section 5: Insurance Coverage

- A. To the extent not supplanted by any mandated federal health coverage plan, the Town

participates in the CalPERS Health Plan Program; however, the Town reserves the right to select the providers of any insurance program(s).

- B. For any CalPERS Health Plan program, the Town shall pay the minimum amount required by law for hospital and medical care benefits under the CalPERS (PEMHCA) Health Plan. Any remaining premium shall be paid by the employee either through the Section 125 Plan (cafeteria flex-plan described below) or payroll deduction or a combination thereof unless replaced by a federally mandated health coverage plan.
- C. Town shall provide an IRS Section 125 Cafeteria Flex Plan account to be utilized exclusively for the payment of qualifying health, dental and vision insurance premiums. Each month, the Town shall deposit the amounts defined below, based on the employee's level of medical plan enrollment, to each participating active employee's IRS Section 125 Cafeteria Flex Plan account. The Town contribution will be equivalent to the costs for health, dental and vision plans as described below;
- a. Based on the 2016 CalPERS published rates for the Kaiser plan according to the following scheme:
- One Party = \$672
 - Two Party = \$1,344
 - Three + Party = \$1,747

Rate adjustments are expected in January 2017. For any CalPERS Kaiser HMO rate increases, the cafeteria contribution shall be adjusted according the following agreement:

- For rate increases of up to and including 3% of any annual premium, the cafeteria plan contribution shall not be increased.
- For rate increases in excess of 3% of the annual premium, the cafeteria plan contribution shall be increased by one half (1/2) of the increase in excess of 3%.

b. Dental

90% of the published rates for single, 2-party, and family

c. Vision

90% of the published rates for single, 2-party, and family

Any required health, dental and/or vision premiums in excess of the amount in the Cafeteria Plan shall be paid by the employee, unless replaced by a federally mandated health coverage plan.

In the event that an employee elects insurance plans that do not use the entire Cafeteria Flex Plan benefit allowance, the Town agrees to contribute 60% of the unused benefit into the employee's health or flex savings account as allowed by law or refunded to the employee.

An employee who elects no medical coverage through the Town shall receive 60% of the Kaiser HMO benchmark used by the Town (employee only, employee plus one, or family) depending on which category the employee is eligible to receive during the open enrollment period.

D. The Town shall establish a flexible spending plan under Internal Revenue Code Section 125, which shall include dependent care provisions under Internal Revenue Code Section 129. Employees may participate in the flexible spending plan according to its terms as may be in effect from time to time, and those employees who are participating shall be responsible for their monthly participation fee.

E. The following provisions shall apply only to those represented employees employed prior to October 1, 2013 and who have qualifying service with the Town of Atherton.

- i. Each employee retiring from employment with the Town while in a job classification covered by this MOU with at least five (5) years of PERS-credited service with the Town shall receive a Town contribution of the current minimum required by the Public Employees Medical and Hospital Care Act (PEHMCA) for health insurance under CalPERS health plan.
- ii. Each employee retiring from employment with the Town while in a job classification covered by this MOU with at least ten (10) years of PERS-credited service with the Town shall receive health benefits equal to the contribution of active employees, inclusive of the current PEMHCA contribution, so long as such retired employee maintains CalPERS health insurance based on the following PEHMCA-approved vesting schedule:

Credited Years of Service	% of Town Contribution
10	50%
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20 or more	100%

- iii. Employees retiring on disability from the employment of the Town while in a job classification covered by this MOU and said disability arising from employment with

- the Town, shall receive 100% of the Town contribution, including the PEMHCA minimum contribution so long as such retired employee maintains CalPERS health insurance and for such period of time as the individual is totally disabled from employment as determined by the City Manager with recourse to the grievance procedure.
- iv. Notwithstanding the foregoing or type of retirement, the total monthly payment from the Town shall not exceed the actual cost of CalPERS health insurance obtained by the retired employee, nor shall it exceed the Town contribution to active employees in the same classifications during the same time period through any cafeteria or other established healthcare compensation plan. As a condition of the foregoing, retired employees shall provide the Town with proof of CalPERS insurance coverage and a continuation thereof in a form satisfactory to the Town at such times as it might request such. The retiree medical benefit provided for by this section may not be resumed when a retired employee discontinues CalPERS health insurance coverage.
 - v. In consideration for employees agreeing to the above vesting schedules each retiree shall have a vested right to receive the retiree health benefits provided within this MOU, together with any adjustments as articulated above. Prospectively, vested rights shall terminate following any break in service.
 - vi. This MOU does not affect the retirement health benefits of current annuitants. Employees classified as annuitants prior to the ratification date of this MOU shall receive the retiree health benefit paid to them under the contract conditions upon which they retired.
- E. The following provisions shall apply to any represented employee hired after September 30, 2013:
- Each employee who has retired from employment of the Town while in a job classification covered by this MOU shall receive a Town contribution of the current minimum PEMHCA required contribution for health insurance.

There shall be no payment or accrual of medical benefits, earned or accruing to any employee upon retirement from the employment of the Town regardless of when it occurs. No employer paid medical benefit is intended to be guaranteed to any such retired employee.

- F. Town may implement a voluntary retiree dental plan effective 1/1/2017 through the end of the current contract 4/30/2018 for as long as the Town uses Delta Dental for dental insurance. The plan can only be offered at the time of retirement from the Town of Atherton and CalPERS concurrently. Option for enrollment expires 60 days after separation of employment from the Town and CalPERS concurrently. If a retiree choose not to take the benefit they cannot be offered it again at a future year.

Voluntary Rates (effective 1/1/2017-04/30/2018):

\$73.99

\$123.79

\$192.17

Continuation of the retiree dental plan is subject to actual participation and may be cancelled by the Town due to lack of participation.

Section 6: Working In A Higher Classification

Upon specific assignments by the Chief of Police or his/her designee, an employee may be required to perform duties of a higher classification. Such assignments shall be made only to existing authorized positions, which are not actively occupied due to the temporary absence of the regularly appointed employee. Such assignments shall not be made to vacant positions except in accordance with the rules pertaining to temporary or provisional appointments.

Employees specifically assigned to duties of a higher classification shall receive an additional five (5) percent of salary for each full workday that they are assigned to act in a higher paid classification. Employees may be returned to their original assignment at any time at the discretion of the Chief of Police, and such return shall not be considered punitive action nor subject to any appeal.

Section 7: Life Insurance

The Town shall provide a life insurance plan in the amount of \$50,000 for covered employees, with the premium for said insurance to be paid solely by the Town if allowable by the Provider of said insurance plan then in effect. Employees may, if available, purchase supplemental insurance at their own cost using the Town's Provider in accordance with conditions established by the Provider. Such additional premiums may be paid through payroll deduction. The Town does not guarantee that the Provider will offer such supplemental insurance program.

Section 8: Uniform Allowance

The Town will provide all required uniforms in accordance with Departmental Policies, Procedures, Rules and Regulations. The Town shall repair or replace uniforms damaged in the line of duty. The determination by the Town as to whether an item shall be repaired or replaced shall be based on what makes the uniform most presentable, not what is least expensive, and is to be determined in the sole discretion of the Chief of Police.

Each full-time new employee required to wear a uniform will be given uniforms consistent with the needs of the applicable position. New Police Officers will be given the following uniforms and equipment:

- 4 Uniform Shirts (Short or long sleeved - at least one long)
- 3 Uniform Pants
- 1 Uniform Duty Jacket
- 1 Class "A" Dress Jacket

- 10 Atherton Police Department shoulder patches
- 1 Nameplate
- 1 Black basketweave belt
- 1 Uniform tie and tie-bar
- 1 pair shoes or boots
- 1 Uniform hat
- All leather gear except firearm holster and chemical agent holder
- Sam Browne
- Belt keepers
- Handcuffs and case
- Baton ring
- Magazine pouch
- 1 Battle Dress Uniform
- 1 Cap Piece
- Rain Gear
- Police Badge

New Dispatchers will be given the following uniforms and equipment:

- 4 Uniform shirts (Short or long sleeved - at least one long)
- 3 Uniform pants
- 1 Uniform tie and tie-bar
- 1 Uniform jacket or sweater
- 10 Atherton Police Department shoulder patches
- 1 Nameplate
- 1 Black basketweave belt

Employees in special assignments will be given additional required equipment and uniforms as necessary and deemed appropriate by the Chief of Police. The Town will provide employees with cleaning services through a contract with an appropriate uniform cleaning service company.

Section 9: Workers' Compensation Insurance

Each employee shall be covered under a Workers' Compensation Program in accordance with State law.

Section 10: Retirement

- A. Employees shall pay 100% of the employees' share of the mandatory member contribution for CalPERS retirement,, presently 9% for sworn and 7% for non-sworn. This amount shall be deducted from employees' paycheck and Town will forward to CalPERS.
- B. Beginning October 1, 2016, sworn employees shall pay an additional 1% toward the employers' share of the CalPERS retirement contribution. An additional 1% shall be collected on July 1, 2017 and July 1, 2018.
- C. Beginning July 1, 2018, non-sworn employees shall pay an additional 1% toward the

employers' share of the CalPERS retirement contribution.

- D. The Town shall provide the PERS 1959 Survivor Benefits at a rate of \$3.50 per month per employee. Employee cost of \$2.00 per month shall be paid through employee payroll deduction.

The following provisions shall apply to those employees hired prior to January 2013.

- A. Sworn employees covered by this MOU will continue to be covered by the California Public Employee Retirement System (CalPERS), 3% @ 50 benefit. Sworn officers shall be entitled to have their retirement benefits calculated on the basis of their single highest salary year.
- B. Non-sworn employees covered by this MOU will continue to be covered by the Public Employee Retirement System (CalPERS), 2% at 55. The Town will provide for unused sick leave to be credited toward CalPERS service time at retirement.

Employees hired after December 31, 2012, shall receive retirement benefits and shall be responsible for member contributions as provided by the provisions of the Public Employees' Pension Reform Act of 2013 (PEPRA) and related Public Employees' Retirement Law (PERL) as amended by Assembly Bill (AB) 340, passed by the California Legislature on August 31, 2012 and signed by the Governor on September 12, 2012.

- A. Sworn employees covered under the terms of PEPRA are considered "new" employees who are covered by the Public Employee Retirement System (CalPERS), 2.7% @ 57.
- B. Non-sworn employees covered under the terms of PEPRA are considered "new" employees who are covered by the Public Employee Retirement System (CalPERS), 2% @ 62.

Section 11: Deferred Compensation Plan

Through regular payroll, the Town shall provide non-sworn employees covered by this MOU with a contribution of 2% of their base salary to the ICMA Retirement Corporation's Deferred Compensation Program or the CalPERS 457 Deferred Compensation Plan. This contribution is contingent upon a matching contribution by the employee.

Section 12: Sick Leave

Sick leave shall be accumulated at a rate of 3.69 hours per biweekly pay period. There shall be no maximum on sick leave accumulations.

Employees using less than 32 hours sick leave per calendar year are eligible to participate in a sick leave incentive program in which sick leave may be converted to vacation time during the following calendar year. Employees with less than five (5) years continuous service cannot participate in the program.

Employees with more than five (5) years but less than ten (10) years continuous service may receive one (1) hour vacation time for each eight (8) hours sick leave not used during the

previous year and converted pursuant to this program.

Employees with more than ten (10) years continuous service may receive two (2) hours vacation time for each eight (8) hours of sick leave not used during the previous calendar year and converted pursuant to this program. All vacation time credit will be rounded to the nearest whole hour.

Employees are responsible for contacting Finance or Human Resources to determine if they are eligible. Conversion of sick leave is not permitted to result in exceeding the maximum vacation accrual.

Section 13: Probationary Period

Employees shall serve an eighteen (18) month probationary period upon hire and a one (1) year probationary period upon promotion to a higher job classification.

Section 14: Holidays

A. The Town's designated holidays are as follows:

New Year's Day
Martin Luther King Day
Lincoln's Birthday
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Christmas Day

B. All employees shall receive eight (8) hours of credit to their holiday balance during the first pay period of the year in recognition of a personal holiday. This time off may be taken as determined by the employee subject to approval of the Chief of Police or his/her designee.

C. Employees who are not scheduled to work on the holiday or who do not work for a full shift which commences on a holiday defined in Section A, shall receive eight (8) hours of credit to their holiday balance.

D. Employees who work a full shift which commences on one of the holidays defined in Section A shall choose one of the following two compensation alternatives:

- a. They shall receive their wage at the normal hourly rate and also receive a holiday hour credit equal to the number hours worked in the shift.
- b. They shall receive their wage at the overtime hourly rate in lieu of any credits to their

holiday balance.

- E. Employees who are not scheduled to work, but are called into work for temporary purposes for any portion of one of the holidays scheduled in Section A shall receive holiday credits in accordance with Section C.

Section 15: Vacation

- A. Vacation shall be accrued, per weekly pay period, for regular full-time employees at the following rates:
- a. Less than 3 years of service – 10 working days per year
 - b. 3 to 8 years of service – 15 working days per year
 - c. 8 years of service or more – 20 working days per year
- B. Beginning on October 1, 2016, total accrued vacation can only be accumulated to two times the employee's annual accrual rate, but not to exceed a total of 320 hours. No accrual of vacation hours shall occur beyond 320 hours, and employees shall not accrue any new vacation leave until their balance is 320 hours or less.

For employees who, on October 1, 2016, exceed the 320 hour upper limit of accrual (“cap”) a separate “surplus” accrual account or “bank” of the remaining hours over the cap will be established. Those employees will work on an individual basis with the Town to reduce the surplus bank to zero (0) before June 30, 2019. Surplus hours may be used as vacation, cashed out in increments or their entirety, or converted to deferred contributions within the annual limits of the law as agreed upon by the employee and Town.

Employees who, on October 1, 2016, have at least a minimum balance of 240 hours accrued at the start of this contract can choose to establish a separate surplus bank that holds a maximum eighty (80) hours. Those employees will reduce that bank to zero (0) before June 30, 2019 as set forth above. Employees must establish this surplus bank no later than December 31, 2016.

On June 30, 2019, those employees with any remaining vacation hours in the surplus bank will be involuntarily paid for all hours in the bank at the pay rate for those employees as of October 1, 2016. If the employee leaves employment with the Town between the time the surplus account was created and reduced to zero, any hours left within the account will be cashed out to the employee upon separation at their current pay rate.

- C. Employees shall be allowed to have the Town buy back accrued vacation, with the approval of the City Manager, in accordance with the following schedule:

Accumulation at 15 days per year – 5 days of buy back by the Town per year
Accumulation at 20 days per year – 10 days of buy back by the Town per year

An employee desiring to implement this option must submit his/her request at the time of vacation sign-up for the upcoming year. To be eligible to sell back vacation time, an employee must have a minimum balance in excess of one half of his/her annual vacation accrual, after any buy back.

Section 16: Off-Duty Court Time Reimbursement

Court time, that is time when employees are required to testify regarding job-related matters as a witness, shall be paid at time and one-half (1.5) with a three (3) hour minimum. Court time continuing for more than four (4) hours will be paid at time and one-half (1.5) or by compensatory time off at a rate of time and one-half (1.5) at the option of the employee.

Two (2) hours of court time shall also be paid at straight time when employees receive less than twenty-four (24) hours cancellation of said mandated court appearance by the Town or, District Attorney, or Municipal/Superior Court systems.

Section 17: Bereavement Leave

All employees covered by this MOU shall be allowed paid leave for not more than five (5) working days when absent because a death has occurred in the immediate family, as defined by and in accordance with the Town's Human Resources Policies & Procedures – Policy #306.

Section 18: Overtime Pay

Overtime shall be paid to an employee at the rate of 1.5 times the employee's regular rate of pay or at the option of the employee, the employee shall receive Compensatory time at the rate of 1.5 times the employee's regular rate of pay.

The calculation of overtime shall include all hours in paid status.

Employees shall be eligible for overtime based on the following:

- Sworn employees, who are on a 12 hour work schedule, shall be eligible for overtime or compensatory time for all hours paid in excess of 84 hours in a 14-day work period.
- Sworn employees, who are on a 10 hour work schedule, shall be eligible for overtime or compensatory time for all hours paid in excess of 80 hours in a 14-day work period.
- Non-sworn employees shall be eligible for overtime or compensatory time for all hours for all hours paid in excess of 40 hours in a 7-day work period.

The Town has adopted the Fair Labor Standards Act (FLSA) Section 207 (k) option for its sworn law enforcement personnel. The exemption is set forth in Section 553.230 of the Code of Federal Regulations.

Section 19: Long-Term Disability

The Town will continue existing coverage under its long-term disability insurance policy for covered employees. In the event of a qualified disability, either service related or not service related, employee compensation from the long-term disability insurance or the Town shall not exceed one hundred percent (100%) of the actual salary to be paid to the employee at the time of the disability. Any funds more than one hundred percent (100%) shall be reimbursed to the Town.

Section 20: Compensatory Time

As used in this MOU, the term "compensatory time" means paid time off that is earned and accrued by an employee in lieu of immediate cash payment for overtime, and may be taken upon approval of their first line supervisor. An employee's compensatory time accrual shall not exceed eighty-four (84) hours, and all overtime earned beyond that will be paid as overtime.

Section 21: Employee Assistance Program

The Town shall maintain an Employee Assistance (EAP) program for psychological counseling available for employees and their dependents, with total Town expenditures not to exceed \$3,000 per employee per year for payment of professional psychological counseling fees. Employee family groups are entitled to attend up to six (6) sessions with the Town sponsored counselors during the term of this MOU when he/she/they determine(s) that psychological counseling is needed to ensure continued good mental health. In addition, the Town shall provide a stress awareness seminar for all employees under the Employees Assistance Program during this contract period.

Section 22: Bilingual Pay

Any employee capable of speaking Spanish, or any language designated by the Town as job-related, at a fluency level satisfactory to the Town shall receive \$200.00 per month in additional salary in addition to the base salary.

Section 23: Educational Reimbursement

Employees who successfully complete courses approved by the Chief of Police in a job-related area, or an approved degree program may receive up to \$5,000 tuition reimbursement each year, subject to availability of funds in the budget.

Employees receiving tuition reimbursement funds from the Town are required to maintain full employment status with the Town for a period of one year following use of the funds or such funds shall be reimbursed to Town upon separation regardless of whether the separation was voluntary or not.

Section 24: Drug/Alcohol Screening/Testing

The Town policy regarding Alcohol and Drug Abuse shall apply to both pre-employment applicants and employees covered within this MOU.

Section 25: CalPERS/Social Security Contingency

If at any time during the life of this MOU, the Town is required by law to make all new or existing employees part of the Social Security System, then all new employees so required will become members of the CalPERS/Social Security Retirement System and shall make such payments into that system as required by law.

Section 26: Physical Fitness Program

The Town may implement a Physical Fitness Program. If implemented, the Program shall be maintained in accordance with the Department's Wellness Policy. The Department's Wellness Policy shall comply with all appropriate State and Federal laws and regulations.

Section 27: Alternative Scheduling

Sworn Personnel Assigned to Patrol:

Sworn personnel assigned to patrol will be assigned a "12 Plan" work schedule based upon twelve (12) hour workdays and a twenty-eight (28) day work cycle with a "four-on three-off, three-on four-off" format within each two week period pursuant to the Department's shift rotation policy.

No officer working a twelve (12) hour shift shall be permitted to work more than sixteen (16) consecutive hours. The only exception to this condition may be extenuating circumstances due to disasters or other emergencies, which require prolonged working hours for personnel.

All time worked during the regularly scheduled shift will be paid at the employee's regular hourly rate. Time worked in excess of the regularly scheduled shift will be paid at time and one half of the employee's hourly salary. Briefing time will be included as part of the twelve (12) hour shift.

Each officer must have a minimum of eight (8) hours "off-time" between regularly scheduled shifts. The only exception to this condition may be extenuating circumstances due to disaster or other emergencies, which require prolonged working hours for personnel. Court appearances and the like are not part of the regularly scheduled shift.

Issues such as late calls and reports, dispatcher relief, watch coverage, comp-time off, shift exchanges, meal relief and breaks shall be handled at the direction and discretion of the team Sergeant.

This schedule consists of 171 work hours in accordance with 207(k) during each twenty-eight (28) day cycle.

Dispatchers:

Dispatchers will be assigned a "12 Plan" work schedule based upon twelve (12) hour workdays and a twenty-eight (28) day work cycle with a "four-on three-off, three-on four-off" format within each two week period pursuant to the Department's shift rotation policy.

No dispatcher working a twelve (12) hour shift shall be permitted to work more than sixteen (16) consecutive hours. The only exception to this condition may be extenuating circumstances due to disasters or other emergencies, which require prolonged working hours for personnel.

The first twelve (12) hours worked during the regularly scheduled shift will be paid at the employee's regular hourly rate, and time worked in excess of twelve (12) hours during the regularly scheduled shift or in excess forty (40) hours in the assigned work week shall be compensated as overtime as set forth in this MOU. Each employee will have an individually assigned regular workweek. Briefing time will be included as part of the twelve (12) hour shift.

Each dispatcher must have a minimum of eight (8) hours "off-time" between regularly scheduled shifts. The only exception to this condition may be extenuating circumstances due to disaster or other emergencies, which require prolonged working hours for personnel.

If dispatch is returned to an eight (8) hour shift schedule during the term of this MOU, the parties shall meet to agree upon a revision of the Police Dispatcher salary ranges to maintain employees' gross income under existing twelve (12) hour shift scheduling.

Issues such as late calls and reports, dispatcher relief, watch coverage, comp-time off, shift exchanges, meal relief and breaks shall be handled at the direction and discretion of the team Sergeant.

Schedule Implementation:

Regularly scheduled shift changes will occur on the first day of the first pay period of January, May, and September.

Shift scheduling may be altered or changed by the Chief of Police should working conditions, staffing, workload, and/or an emergency situations so require. Should the Chief desire to effect such a change, the Chief shall, insofar as possible, give advance written notice to the APOA of the proposed change, the reason(s) therefor, the proposed revised schedule, and shall provide a reasonable opportunity to discuss such change prior to implementation, provided however that the foregoing provisions do not apply to normal shift rotations.

Section 28: Field Training Officer (FTO) and Communications Training Dispatcher (CTD) Pay

An employee, when qualified as an FTO or a CTD, and when assigned by the Police Chief or his/her designee as such, shall receive FTO/CTD pay in addition to regular pay in an amount equal to 5% of the employee's base salary for each hour of training the employee is so assigned.

Section 29: Assignment Pay

- A. An employee when qualified and assigned by the Chief of Police or his/her designated representative to act in the capacity of School Resource Officer, Motorcycle Officer, or any similar assignment designated by the Chief and approved by the City Manager shall receive additional assignment pay in an amount equal to 5% of the employee's base salary for each full shift the employee is so assigned. In the event that grant funding for any of these special assignments is reduced or discontinued, in its discretion, the Town may eliminate such assignment and the corresponding assignment pay without any need to meet and confer over the discontinuance of such assignment.
- B. Employees in sworn police classifications assigned to work as detectives shall receive a 5% increase in their normal step rate for such assignment. Officers are assigned as detectives at the discretion of the Chief of Police. Employees may be returned to their original assignments at any time at the discretion of the Chief of Police and such return shall not be considered "punitive action" nor subject to any appeal, nor subject to any requirement to meet and confer regarding such reassignment.
- C. Employees in sworn police classifications assigned to work as K-9 officers shall receive a 5% increase in their normal step rate during such assignment. Officers are assigned as K-9 officers at the discretion of the Chief of Police. Employees may be returned to their original assignments at any time at the discretion of the Chief of Police and such return shall not be considered "punitive action" nor subject to any appeal not subject to any requirement to meet and confer regarding such reassignment.

Employees in sworn police classifications assigned to work as K-9 officers shall be compensated for off-duty K-9 care as follows: The Town and the Association agree that the amount of off-duty compensable working time attributable to all ordinary aspects of canine care (including without limitation, handling, caring, feeding, exercising, grooming, kennel cleaning, cleaning of Town vehicles, and ordinary transport to a veterinarian) by employees assigned to K-9 duty is seven (7) hours per weekend both the Town and the K-9 officers agree that the 5% increase in pay is fair compensation for the duties of caring for the dog outside of work hours and such time is included in the higher level of compensation.

This MOU is made pursuant Fair Labor Standards Act regulation 29 CFR § 785.23. If and when an employee assigned to K-9 duty performs any extraordinary work involving the animal, the employee shall report such work immediately to the Chief of Police in writing and in no event less than 24 hours after completing such work, and where approved, employee shall be paid for such time expended as if worked. "Extraordinary work" includes, but is not limited to, unanticipated trips for emergency veterinarian care and any work which causes a substantial increase in work time beyond the agreed-upon hours necessary for routine care as identified above.

Section 30: Jury Duty

An employee required to report for jury duty shall be granted a leave of absence consistent with the Town's Administrative Policy Manual.

Section 31: Employee Referral Program

Current employees are eligible to receive an award of compensatory time off for referring a successful candidate for positions within the Atherton Police Officers' Association. The referring employee receives twelve (12) hours compensatory time off when the new officer completes field training and another twelve (12) hours compensatory time off when the new officer completes probation.

It is the responsibility of the employee to request the compensatory time under the referral program at each interval mentioned above. A form will be available.

ARTICLE VI NON-DISCRIMINATION

The Town maintains and along with all employees adheres to a non-discrimination policy maintained within its Administrative Policy Manual.

ARTICLE VII GRIEVANCE PROCEDURE

Section 1: Definitions

- A. A "grievance" is a claimed violation, misinterpretation, inequitable application or non-compliance with any provision of this MOU, including disputes regarding working conditions and terms, but not regarding any imposition of discipline pursuant to this MOU or exercise of any enumerated management right.
- B. A "grievant" is an employee or a group of employees that are members of the APOA.

Section 2. Informal Grievance Procedure

As soon as possible, but no more than ten (10) calendar days after occurrence of an event giving rise to a grievance, the grievant shall present the grievance informally to the supervisor of the involved employee or employees, except if the grievance involves the supervisor, it shall be submitted to the Department Commander. The grievant and the supervisor have a mutual responsibility to resolve the matter at the lowest possible level.

If the grievance is not resolved through supervisor discussions, the grievance shall be presented to the Department Commander who shall review the matter and respond in writing to the grievant as to the Lieutenant's recommended disposition of the matter. If the initial grievance was filed with the Lieutenant, the matter shall be submitted to the Chief of Police for review and written response.

These informal steps shall be utilized and exhausted prior to filing of a formal grievance.

Section 3: Formal Grievance Procedure

If the grievant feels the issue was not satisfactorily resolved by the informal grievance procedure, a formal grievance may be filed within ten (10) calendar days from the receipt of the written informal decision. A formal grievance shall be initiated by submitting a form provided by the Department to the Chief of Police including a clear statement of the nature of the grievance, citing applicable language in the MOU in question and outlining the proposed solution of grievant.

Step 1. Within ten (10) calendar days after receipt of the formal grievance form, the Chief of Police shall investigate the grievance, confer with the grievant and attempt to resolve the issue. The Chief shall, after considering all pertinent information, make a proposed written determination.

Step 2. If the grievant remains dissatisfied with the proposed determination of the Chief of Police, the grievant may within ten (10) calendar days request the matter be submitted to the City Manager for review and determination. Such request shall be in writing on a form provided by the Department to the City Clerk.

Step 3. Within ten (10) calendar days after receipt of the written request, the City Manager shall investigate the grievance, confer with the grievant and other persons involved to the extent deemed necessary, and render a written decision.

The decision of the City Manager shall be final and binding.

ARTICLE VIII DISCIPLINE

The Town shall follow the principles of corrective progressive discipline as outlined in Police Department Lexipol policies and the Town's Human Resources Policies and Procedures – Policy #204, and in accordance with the Public Safety Officers Procedural Bill of Rights (Government Code Sections 3300 et seq.).

ARTICLE IX LEAVES OF ABSENCE

The Chief of Police, or his/her designee, may grant an employee a leave of absence without pay or benefits, pursuant to the Town's Human Resources Policies & Procedures.

ARTICLE X LAYOFF AND RECALL

Although not limited to the following, layoffs shall ordinarily be for lack of work and/or lack of funds. In the event of layoffs," the Town shall provide laid off employees a written explanation of reasonable purpose for said layoff. If it is determined that layoffs are necessary, employees shall be laid off in the following order:

- E. Temporary employees, seasonal employees, provisional employees of less than one year. Reserve Officers are not included in this description.
- F. Part-time employees, who are defined as employees hired to work less than twenty (20) hours per week. Reserve Officers are not included in this description.
- G. Probationary employees; and
- H. Permanent full-time employees. When layoffs are determined, the order of layoffs shall be by seniority within classification. When seniority by classification is identical for two employees, seniority within the department shall determine senior employee. Those with the least time in classification/department shall be laid off first. An employee in a higher classification may take a position in a lower classification, i.e., Sergeant to Police Officer. Time in the higher classification shall count toward seniority in the lower classification.
- I. Non-sworn positions are considered to be a separate classification not lower than Police Officer.

Employees who are laid off shall be placed on a recall list for a period of one year. If there is a recall, employees who are still on the recall list shall be recalled in the inverse order of their layoff, provided they are presently qualified to perform the work in the job classification to which they are recalled without further training.

If an employee is recalled to a position in a lower paid job classification, he/she shall have the right to return to the job classification he/she held prior to being laid off in the event it subsequently becomes available, providing he/she continues to meet all qualifications for that position. If an employee is recalled to a lower rated job classification, the employee shall have the right to refuse recall and remain on the recall list. The Town shall not hire new employees in covered positions as long as there are still employees on the recall list who are presently qualified to perform the work in the affected job classification and are willing to be recalled to said classification.

Employees who are eligible for recall shall be given fourteen (14) calendar days notice of recall. Such notice shall be sent to the employee by certified mail with a copy to the Association, to the address listed on the recall list. Employee must notify the Town in writing of his/her intention to return to work within three (3) working days after receipt of notice of recall. The Town shall be deemed to have fulfilled its obligations by mailing the recall notice by certified mail, return receipt, to the mailing address provided by the employee, it being the sole obligation and responsibility of the employee to provide the City Manager with his/her latest mailing address.

Each employee who receives notice of layoff will be required to take a medical examination provided by the Town before he can be included on a recall eligibility list. This exam will determine ability to perform those tasks described within the police manual.

If recall occurs after a three-month (3) period, an additional medical examination will be required following applicable procedures set forth within the Town's Administrative Policy Manual or this MOU.

Length of service as pertaining to this section shall be determined by computing total continuous service starting from the first day of service in classifications covered by the MOU.

**ARTICLE XI
MEDICAL PHYSICAL EXAMINATION OF EMPLOYEES**

Section 1: Examinations

The Town of Atherton requires a physical examination of each employee prior to being hired by the Police Department. In addition, an employee may be required to undergo physical examination(s) during employment with the Town as requested by the Chief of Police to determine fitness for duty. The following procedures shall be followed with respect to all such medical examinations:

The physical examination will be conducted by the department's specified physician at the Town's expense.

The physician conducting the examination shall furnish to the Town of Atherton a fitness for duty report, including any functional limitations of the employee based on job descriptions and requirements provided to the physician. No medical information beyond the physician's fitness for duty report, including any functional limitations, shall be provided to the Town unless the officer has executed a voluntary written authorization for release of such records.

Section 2: Failure of Examination

Any employee who fails to pass a physical exam may, at their option, have a review of that determination in the following manner:

The employee may employ a qualified medical examiner acceptable to the Town and at employee's own expense for the purpose of producing a physical examination for the same purpose as the physical examination made by the physician employed by the Town. The qualified medical examiner shall provide the Town with a completed P.O.S.T. Form 3253 (Medical Examination Report), and also furnish to the Town a fitness for duty report, including any functional limitations of the employee. No medical information shall be provided to the Town unless the employee has executed a voluntary written authorization for release of the records. In the event that such findings verify the findings of the physician employed by the Town, no further review of the case shall be afforded.

In the event that the findings of the qualified medical examiner chosen by the employee shall disagree in any significant respect with the finding of the physician employed by the Town, the Town will, at the request of the employee, ask that the two physicians agree upon and appoint a third qualified and disinterested medical examiner, preferably a specialist, for the purpose of making a further physical examination of the officer.

The disinterested medical examiner shall then make a further medical examination of the employee in question and the case shall be resolved on the bases of that physician's written findings.

The expense of employing the disinterested medical examiner shall be borne by the Town in the event that the findings of that physician concur substantially with the findings of the medical examiner employed by the employee, and shall be borne by the employee in the event that the findings of the disinterested medical examiner concur substantially with the findings of the medical examiner of the Town. Copies of the disinterested medical examiner's report shall be furnished to the Town and to the employee.

In the event that medical examiner employed by the employee or the disinterested medical examiner concurs with the findings of the medical examiner employed by the Town, the officer shall be immediately placed on a forced leave of absence if the findings indicate that the employee may become fit for duty within the next 12 months. Such leave of absence may be subject to the Labor Code Section 4850 in the case of sworn employees, or other applicable state or federal laws. However, should an employee be released from their employment for any medical or medical-related reason payoff unfitness for duty, the Town agrees that COBRA benefits shall be afforded employee. The employee shall have the right to first use up accumulated sick leave and vacation, if any.

Medical examinations shall be scheduled with the interest of the employee and employer in mind. The employee's hours of sleep and days off will be considered in this scheduling. Where the employee, due to shift timing must take the physical examination of on their own time, they will be compensated in accordance with overtime rules as stated elsewhere in the MOU.

ARTICLE XII SAFETY EQUIPMENT

The Town shall provide the following Safety Equipment:

- Riot Baton with rubber grommet.
- Helmet with tilt-up face shield.
- Soft Body Armor
- Taser and Holder
- Pepper Spray and Holder.
- ASP Collapsible Baton and Holder
- Duty Holster
- Firearm with three magazines
- Rain coats and pants; hat covers.
- Flashlight

The Town shall repair or replace safety equipment items damaged in the line of duty. In the event of damages to safety items that are a direct result of the negligence or intentional misconduct of the employee, the employee may be subject to disciplinary action. In the event of a determination of gross negligence or willful misconduct, disciplinary action may include a requirement to reimburse the Town for damages.

ARTICLE XIII

AMERICANS WITH DISABILITIES ACT

The Association and Town agree that the provisions of this MOU shall be interpreted and applied by both parties in a manner consistent with the Americans with Disabilities Act.

**ARTICLE XIV
SEVERABILITY**

Notwithstanding any other provision in the MOU to the contrary, in the event any article, or subsection thereof, of this MOU shall be declared invalid by any court of competent jurisdiction, or by any applicable state or federal law or regulation, or should a decision by any court of competent jurisdiction, or any applicable state or federal law or regulation diminish the benefits provided by this MOU, or impose additional obligations on the Town, the parties shall meet and confer on the article or subsections thereof affected. In such event, all other provisions of this MOU not affected shall continue in full force and effect.

**ARTICLE XV
FULL UNDERSTANDING, MODIFICATION AND WAIVER**

- A. This MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, Understandings, and Agreements, regarding the matters set forth herein, whether formal or informal are hereby superseded and terminated in their entirety.
- B. It is the intent of the parties that Ordinances, Resolutions, Rules and Regulations enacted pursuant to this MOU be administered and observed in good faith.
- C. During the term of this MOU, the parties shall meet and confer at the request of either party pertaining to matters related to the scope of representation of the APOA.
- D. To the extent that any of the provisions of the MOU will have any retroactive effect upon final ratification of the MOU by the APOA and final adoption of the MOU by the Town, such retroactive effect will only apply to those employees covered by the MOU who are actively employed by the Town on the date of the aforementioned final actions of the parties.

This MOU is subject to approval by the City Council of the Town of Atherton and the appropriate representative of the Atherton Police Officers' Association.

FOR THE TOWN OF ATHERTON

**FOR THE ATHERTON POLICE
OFFICERS' ASSOCIATION**

City Manager

President, Atherton Police
Officers' Association