

## **Resolution 23 - XX**

### **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 JULY 1, 2023 THROUGH JUNE 30, 2027**

**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 July 1, 2023 through June 30, 2027; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the Town of Atherton does hereby ratify the attached Memorandum of Understanding 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 June 21, 2023, by the following roll call vote:

AYES:            COUNCILMEMBERS:  
NOES:            COUNCILMEMBERS:  
ABSENT:          COUNCILMEMBERS:  
ABSTAIN:        COUNCILMEMBERS:

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William R. Widmer, Mayor  
Town of Atherton

ATTEST:

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Anthony Suber, City Clerk

APPROVED AS TO FORM:

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Mona Ebrahimi City Attorney

## TABLE OF CONTENTS

<b>Article I – Term of Memorandum</b>	<b>3</b>
Section 1 – Term	3
<b>Article II – Recognition &amp; Rights</b>	<b>4</b>
Section 1 – Recognition	4
Section 2 – POA Rights	4
Section 3 – Town Rights	4
<b>Article III – Authorized Agents</b>	<b>5</b>
<b>Article IV – Purpose</b>	<b>6</b>
<b>Article V – Salary and Benefits</b>	<b>6</b>
Section 1 – Classifications covered by this MOU	6
Section 2 – Salary	6
Section 3 – POST Certificate	7
Section 4 – Per Diem Expense	7
Section 5 – Insurance Coverage	7
Section 6 – Working in a Higher Classification	11
Section 7 – Life Insurance	11
Section 8 – Uniform Allowance	11
Section 9 – Workers’ Compensation Insurance	12
Section 10 – Retirement	12
Section 11 – Deferred Compensation Plan	13
Section 12 – Sick Leave	13
Section 13 – Probationary Period	14
Section 14 – Holidays	14
Section 15 – Vacation	15
Section 16 – Off-Duty Court Time Reimbursement	16
Section 17 – Bereavement Leave	16
Section 18 – Overtime Pay	16
Section 19 – Long Term Disability	16
Section 20 – Compensatory Time	17
Section 21 – Employee Assistance Program	17
Section 22 – Bilingual Pay	17
Section 23 – Educational Reimbursement	17
Section 24 – Drug/Alcohol Screening/Testing	17
Section 25 – CalPERS/Social Security Contingency	17
Section 26 – Physical Fitness Program	18
Section 27 – Alternative Scheduling	18
Section 28 – Field Training Officer (FTO) and Communications Training Dispatcher (CTD) Pay	19
Section 29 – Assignment Pay	19
Section 30 – Jury Duty	20
Section 31 – Employee Referral Program	20
<b>Article VI – Non-Discrimination</b>	<b>21</b>
<b>Article VII – Grievance Procedure</b>	<b>21</b>
Section 1 – Definitions	21

Section 2 – Informal Grievance Procedure	21
Section 3 – Formal Grievance Procedure	21
<b>Article VIII – Day for a Day</b>	
<b>22</b>	
<b>Article IX – Leaves of Absence</b>	<b>22</b>
<b>Article X – Layoff and Recall</b>	<b>22</b>
<b>Article XI – Medical Physical Examination of Employees</b>	<b>23</b>
Section 1 – Examinations	23
Section 2 – Failure of Examination	24
<b>Article XII – Safety Equipment</b>	<b>25</b>
<b>Article XIII – Americans with Disabilities Act</b>	<b>25</b>
<b>Article XIV – Severability</b>	<b>25</b>
<b>Article XV – Full Understanding, Modification and Wavier</b>	<b>26</b>

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE TOWN OF ATHERTON**  
**AND**  
**THE ATHERTON POLICE OFFICERS' ASSOCIATION**  
**FOR THE PERIOD JULY 1, 2023 THROUGH JUNE 30, 2027**

This Memorandum of Understanding (hereinafter referred to as "MOU") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the Town of Atherton (hereinafter "Town" or "Employer"), and the Atherton Police Officers' Association (hereinafter "Association"). 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 July 1, 2023 through June 30, 2027. 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.

The parties shall commence negotiations for a successor MOU no later than February 1<sup>st</sup> of the final year of this Agreement.

## **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 following classifications that the parties agree constitute an appropriate unit:

- a. Non-Sworn Classifications
  - i. Dispatcher / Records Assistant
  - ii. Support Services Coordinator / Dispatcher
  - iii. Code Enforcement Officer
  - iv. Police Trainee
  
- b. Sworn Classifications
  - i. Police Officer
  - ii. Police Sergeant

In the event the Town decides to establish a permanent supervisory classification to oversee the dispatch/communications center, the Parties agree to meet and confer in good faith regarding the wages, hours, and other terms and conditions of the new classification prior to any announcement of the classification, recruitment, or application process.

In recognition of the duties and responsibilities of the employees in the Community Service Officer classification, this classification has been reclassified as the Support Services Coordinator / Dispatcher. In recognition of the duties and responsibilities of the employees in the Community Service Officer / Code Enforcement Officer classification, this classification has been reclassified as the Code Enforcement Officer.

### **Section 2: Association Rights**

#### A. Use of Town Facilities

The Association shall have the right to reasonable use of Town facilities with the prior consent of the Town 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. Association Dues and Access to New Employee Orientation

##### a. General

All employees within the bargaining unit represented by the Association may voluntarily join the Association and pay dues, initiation fees, and general assessments, as well as payment of any other

membership benefit program sponsored by the organization (hereinafter “payroll deductions”) as determined by the Association. It shall be the responsibility of the Association to maintain a record of employees who have given their written consent to join and pay dues to the Association. The Association shall certify to the Town the amount of such payroll deductions to be deducted.

b. New Employee Orientation

The Town shall provide the Association with two (2) weeks advance notice of the start date of any new hire to a represented classification. The Town shall provide the Association with an exclusive one (1) hour meeting with any new employee or group of employees covered by this MOU, during the employee orientation (i.e., the first two (2) days of employment). The specific date, time, and location of the one (1) hour union meeting with new employees will be coordinated by the Chief of Police and the President of the Association.

c. Payroll Deductions/Authorizations

The Town agrees to deduct the periodic payroll deductions from the paycheck of each employee who voluntarily executes a valid authorization form as certified by the Association, or pursuant to an authorization form tendered to the Town by either the Association or the employee. All sums deducted by the Town shall be remitted to the Association in an expedient manner and at the intervals requested by the Association (i.e., no more than seven (7) calendar days after the deduction), together with a list of names of each employee for whom a deduction was made.

The Town will implement any change to an employee’s payroll deductions in the first full pay period following notification of such change by the Association.

If an employee member in the bargaining unit desires to revoke, cancel or change prior dues deduction authorization, the Town shall direct the employee member to the Association. Any such dues deduction revocation, cancellation and/or change shall only be effective when submitted by the Association directly to the Town and is subject to the terms and conditions as set forth in the original payroll deduction/authorization.

It is understood that all bargaining unit members who decline to join the Association may forego certain benefits exclusively provided via the Association to its members.

d. Indemnification

The Association shall indemnify and hold the Town harmless from any cost or liability resulting from any and all claims, demands, suits, or any other action by employees for Payroll Deductions made in reliance on information provided by the Association.

### **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 good faith 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 employee's 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. In the event the Town's exercise of its management rights impacts a mandatory subject of bargaining not covered under the terms of this Agreement, the Town will meet and confer on the impacts at the request of the Association.

Nothing herein shall be deemed as a waiver by the 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: 80 Fair Oaks Lane, Atherton, CA 94027; telephone: (650) 752-0504).
- B. The Atherton Police Officers Association principal authorized agent shall be the Association's President; or the President's designee; (address: PO Box 1427, Menlo Park CA 94025).

## **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 Association.

## **ARTICLE V SALARY AND BENEFITS**

### **Section 1: Salary**

- A. The salary schedules for the covered classifications within the police department are set by separate resolution adopted by the Town Council.
- B. One-Time Equity Adjustments

Effective the first full pay period after ratification, the Town shall provide the following one-time equity adjustments to each qualifying members' salary schedule:

- Code Enforcement Officer: 4.27%
- Communications Supervisor: 10.01%
- Dispatcher/Records Assistant: 2.9%
- Police Officer – 6.33%
- Police Sergeant: 5.76%

- C. 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. Effective the first full pay period after ratification by Council, the Town shall provide a cost of living adjustment equal to the Consumer Price Index—All Urban Consumers (CPI-U), as reported by the Bureau of Labor Statistics for the San Francisco Area, using the percentage change in price index from February 2022 to February 2023. The increase shall be no less than two percent (2%) and no greater than four percent (4%). The parties mutually acknowledge that in

recognition of the multiple functions performed by the Support Services Coordinator / Dispatcher, the wages for this classification have been set as five percent (5%) below that of a Dispatcher/Records Assistant. In setting the wage schedule for the Support Services Coordinator / Dispatcher as five percent (5%) below that of a Dispatcher/Records Assistant, the parties have incorporated any applicable POST Certificate premiums available to the Support Services Coordinator / Dispatcher into base pay.

- b. Effective the first full pay period including July 1, 2024, the Town shall provide a cost of living adjustment equal to the Consumer Price Index—All Urban Consumers (CPI-U), as reported by the Bureau of Labor Statistics for the San Francisco Area, using the percentage change in price index from February 2023 to February 2024. The increase shall be no less than two percent (2%) and no greater than four percent (4%).
    - c. Effective the first full pay period including July 1, 2025, the Town shall provide a cost of living adjustment equal to the Consumer Price Index—All Urban Consumers (CPI-U), as reported by the Bureau of Labor Statistics for the San Francisco Area, using the percentage change in price index from February 2024 to February 2025. The increase shall be no less than two percent (2%) and no greater than four percent (4%).
    - d. Effective the first full pay period including July 1, 2026, the Town shall provide a cost of living adjustment equal to the Consumer Price Index—All Urban Consumers (CPI-U), as reported by the Bureau of Labor Statistics for the San Francisco Area, using the percentage change in price index from February 2025 to February 2026. The increase shall be no less than two percent (2%) and no greater than four percent (4%).
  - D. 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 to each subsequent step twelve (12) months after the date of entry into their existing step, provided they have received a satisfactory performance evaluation conducted by the Town.
  - E. Changes between ranges and/or steps shall be made at the beginning of the pay period immediately following the employee's anniversary date.
  - F. 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 Sheriffs 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 2: P.O.S.T. Certificate**

Any Officer or Sergeant possessing or qualifying for 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 possessing or qualifying for 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/Records Assistant possessing or qualifying for 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/Records Assistant possessing or qualifying for 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/Records Assistant is five percent (5.0%) above base salary.

## **Section 3: 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. The Town shall reimburse employees based upon a daily per diem amount equal to eligible daily total of General Services Administration (GSA) per diem rates.

## **Section 4: 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 2019 CalPERS published rates for the Kaiser plan according to the following scheme:

- One Party = \$691
- Two Party = \$1,383
- Three + Party = \$1,798

For any future 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 Town 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.

F. The following provisions shall apply to any represented employee hired after September 30, 2013:

- i. 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.

G. Town may implement a voluntary retiree dental plan 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.

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

## **Section 5: Working In A Higher Classification**

A supervisor may assign in writing an employee to work “Out of Class” in a higher classification and receive “Out of Class Pay” if:

- a) the employee will assume the full range of duties of the higher classification;
- b) the assignment will not and does not exceed 960 hours in a fiscal year; and
- c) the assignment is to a position in a higher class that is vacant during recruitment for a permanent employee (i.e., does not include a vacancy due to an employee on leave).

Out of Class Pay shall be at the pay step in the higher class closest to but no less than 5% higher than the employee’s base pay and is intended to be PERSable compensation under Government Code section 20480. To qualify as Out of Class Pay rather than Acting Pay (see next paragraph), the assignment must be approved by the Chief of Police of his/her designee and the Human Resources Division.

A supervisor may also assign in writing an employee to work in a higher class and receive “Acting Pay” if the employee will assume the full range of duties of the higher classification and does not qualify for Out of Class Pay. Acting Pay shall also be at the pay step in the higher class closest to but no less than 5% higher than the employee’s base pay but is not PERSable compensation under Government Code section 20480.

All compensation provided under this section shall be on an hour for hour basis, with no minimum number of hours required.

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 6: 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 7: 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.

All personnel employed by the Town on the date of ratification of this Agreement shall be provided a new pair of uniform pants on or before August 1, 2019. 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)
- 4 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)
- 4 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.

Additionally, all employees will receive an annual boot/footwear allowance of \$250 to be paid in the first full pay period of each calendar year.

### **Section 8: Workers' Compensation Insurance**

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

### **Section 9: Retirement**

- A. Classic 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. Classic sworn employees shall contribute an additional three percent (3%) toward the employer's share of the CalPERS retirement contribution for a total contribution of 12%. This amount shall be deducted from employees' paycheck and Town will forward to CalPERS.
- B. 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 10: Deferred Compensation Plan**

Through regular payroll, the Town shall provide all non-sworn employees covered by this MOU with a contribution of 3% 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.

Sworn-Employees may participate in the ICMA Retirement Corporation's Deferred Compensation Program or the CalPERS 457 Deferred Compensation Plan. Beginning the first full pay period after August 1, 2023, the Town will match up to \$25.00 per pay check of any sworn-employee contribution. If the Sworn-Employee does not contribute, the Town will still automatically contribute \$10.00 per pay check for the sworn employee who voluntarily enrolls. Under no circumstances, will the Town contribute more than \$35.00 per pay check for any employee.

## **Section 11: 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.

The Town recognizes employees who demonstrate an outstanding attendance record over a prior calendar year. Under this program, employees are allowed to convert a portion of their unused sick leave to pay or compensatory time off in the month of December and the month of June each year. In order to be eligible for this recognition, an employee must have been a regular full-time employee of the Town for the full preceding calendar year, and must have used 24 or fewer hours of sick leave during the preceding six months.

Participating employees shall submit a request in writing to Human Resources by the 15<sup>th</sup> of the month (i.e., June 15<sup>th</sup> or December 15<sup>th</sup>). An initial request in 2019 by July 15 shall be permitted upon the initiation of the program.

The option to buy back sick leave is subject to the requirement that the employee maintain 80 hours of combined leave (i.e., vacation, sick, compensatory time off, etc.) once the buy-back is applied. Buy-back shall be calculated at the employee's regular rate of pay.

Level 1: Employees who have not used any sick leave hours over the previous six (6) months have the option to buy back or convert up to 30 hours of unused sick leave.

Level 2: Employees who have used up to 12 sick leave hours over the previous six (6) months have the option to buy-back or convert up to 12 hours of unused sick leave.

Level 3: Employees who have used more than 12 but less than 24 sick leave hours over the previous six (6) months have the option to buy back or convert up to eight (8) hours of unused sick leave.

## **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. The probationary period for employees in the Police Officer job classification shall include time spent in the Police Academy if employed by the Town as a Police Trainee. Lateral employees shall be subject to a twelve (12) month probationary period upon hire.

## **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. 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.

Employees shall be allowed to have the Town buy back any accrued vacation, with the approval of the Town Manager that the employee has satisfied the following condition:

- a. 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 Call Back and Court Time Reimbursement**

If an employee is required to report to a work assignment during his/her off-duty hours, and those off-duty hours are not contiguous with his/her regularly scheduled shift, he/she shall receive a minimum of four (4) hours pay at one and a half (1-1/2) times the employee's regular rate.

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) the employee's regular rate of pay with a four (4) hour minimum. Court time continuing for more than four (4) hours will be paid at time and one-half (1.5) of the employee's regular rate of pay 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 number of overtime hours worked.

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 28 day work period under Section 207(k) of the Fair Labor Standards Act (FLSA) 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**

Effective July 1, 2019 or as soon thereafter as administratively feasible, the Town will provide the PORAC Platinum Short and Long Term Disability Plan to sworn (safety) personnel covered under this Agreement, and the PORAC Platinum Short Term Disability Plan to all miscellaneous (non-safety) personnel covered under this Agreement. To the extent permitted by law, the Town will pay applicable premiums in a manner that allows employees receiving PORAC plan benefits on a tax-advantaged basis. In the event the Town discovers that the cost of the designated PORAC plans exceeds the cost available to the Town for its previous long term disability insurance benefit, the Town will provide notice to the Association and an opportunity for the Association to either: (a) select an alternative plan that is cost neutral to the Town; (b) elect to pay the cost of any premium in excess of the Town's long term disability plan premium; or (c) enroll in the Town's long term disability plan.

### **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 168 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 \$400.00 per month in additional salary in addition to the base salary. The Town will maintain a standardized testing procedure to ensure fair and consistent standards for determining fluency.

### **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 will maintain the Physical Fitness Program negotiated by the parties in accordance with the Department's Wellness Policy (Policy 1031), which is incorporated by reference in this Agreement. The parties agree to meet and confer as needed to ensure that the Department's Wellness Policy complies with all appropriate State and Federal laws and regulations.

### **Section 27: Alternative Scheduling**

*Sworn Personnel Assigned to Patrol and Motors/Traffic:*

Sworn personnel assigned to patrol or motors/traffic will be assigned a "12 Plan" work schedule based upon twelve (12) hour working day 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 twelve (12) hour working days 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 168 work hours in accordance with 207(k) during each twenty-eight (28) day cycle.

*Dispatchers/Records Assistants:*

Dispatchers/Records Assistants will be assigned a "12 Plan" work schedule based upon twelve (12) hour working day 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. The standard work week for Dispatchers/Records Assistants assigned to twelve (12) hour working days will begin exactly six (6) hours into an employee's last twelve (12) hour shift, which constitutes the employee's four day work week. It is understood that this may cause an individualized work week for those affected employees.

Additionally, the Police Chief may assign the overlap dispatch, which is a special assignment, position to an alternative work schedule. (The special assignment is defined per this MOU)

No dispatcher working a twelve (12) hour working day 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 Dispatcher/Records Assistant 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.

*Detectives/Investigations*

Sworn personnel assigned to detectives/investigations will be assigned a "10.5 Plan" work schedule based upon four consecutive 10.5 hour working day per week with a "four-on three-off" format.

No officer assigned to a 10.5 working day 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 10.5 hour working day.

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 168 work hours in accordance with 207(k) during each twenty-eight (28) day cycle.

*Support Services Coordinator/Dispatcher and Code Enforcement Officers*

Employees in the classifications of Support Services Coordinator/Dispatcher and Code Enforcement Officers will be assigned a "10.5 Plan" work schedule based upon four consecutive 10.5 hour working days per week with a "four-on three-off" format.

No Support Services Coordinator/Dispatcher or Code Enforcement Officer assigned to a 10.5 hour working day 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 10.5 hours worked during the regularly scheduled shift will be paid at the employee's regular hourly rate, and time worked in excess of 10.5 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. Briefing time will be included as part of the 10.5 hour shift.

Each Support Services Coordinator/Dispatcher and Code Enforcement 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.

Issues such as late calls and reports, 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.

Barring an emergency, any change to shift scheduling will be subject to meet and confer. As described in *Sonoma County Organization of Public/Private Employees, Local 707, et al. v. County of Sonoma* (1991) 1 Cal.App.4th 267, 277), an “emergency” is recognized as “an unforeseen situation calling for immediate action” due to “an imminent and substantial threat to public health or safety” such that there is “a substantial likelihood that serious harm will be experienced...unless immediate action is taken.”

**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 Town 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 approximately 20 minutes per day, and that K-9 officers will be paid at the overtime rate of pay for all such time (i.e., 2 hours and 20 minutes per week). K-9 officers will be provided a take-home vehicle for transportation of the K-9 to and from work.

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 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 Association and the Town hereby agree that there shall be no discrimination because of race, color, age, disability, sex, sexual orientation, national origin, political or religious affiliation, or any other protected classification as provided by applicable local, state or federal law. There shall be no discrimination in employment conditions or treatment of employees on the basis of membership or non-membership in the Association, or participation in the lawful activities of the Association.

## **ARTICLE VII GRIEVANCE PROCEDURE**

## **Section 1: Definitions**

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.

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.

## **Section 4: 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 VIII DAY FOR A DAY**

Employees will not be compelled to use his/her time off to make up the difference between a regular work shift and a training day or holiday. Specifically, in recognition of the cost attributable to employee travel time, those employees assigned to an alternative work schedule under Section 27 will be credited with working a full shift for all training days scheduled to last at least eight (8) hours that occur on the employee's regularly scheduled work days. Further, employees directed to take a regularly scheduled shift off duty in observance of a holiday shall be credited with working a full shift.

## **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:

- A. Temporary employees, seasonal employees, provisional employees of less than one year. Reserve Officers are not included in this description.
- B. 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.
- C. Probationary employees; and
- D. 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.
- E. 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 Town 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 requires a physical examination of each employee prior to being hired by the Police Department. In addition, where an employee has demonstrated objective signs or symptoms that reasonably suggest that s/he may be unable to meet the demands of the job, s/he 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, voluntarily and unqualifiedly agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this Agreement. However, nothing shall preclude the parties from meeting and conferring at the request of either party pertaining to matters related to the scope of representation of the Association.
- 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 Association 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 Council of the Town of Atherton and the appropriate representative of the Atherton Police Officers' Association.

**FOR THE TOWN OF ATHERTON**

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City Manager

**FOR THE ATHERTON POLICE  
OFFICERS' ASSOCIATION**

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President, Atherton Police  
Officers' Association