

May 30, 2013

Bill Pope
Business Representative
International Union of Operating Engineers, Local #3 (OE#3)
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: Retiree Healthcare Coalition Counterproposal

Dear Bill:

Thank you for providing us the Coalition's retiree healthcare counterproposal dated May 23, 2013. We appreciate the Coalition's acknowledgment of the short time frame we have to reach an agreement before the retirement board sets the contribution rates for Fiscal Year 2013-2014.

Enclosed is the City counterproposal, which we hope will lead to a tentative agreement. As you know, an agreement will need to be reached prior to when the Federated City Employees' Retirement System Board establishes the contributions rates, in order to affect the retiree healthcare rates for Fiscal Year 2013-2014. However, if we do not reach an agreement before that date, we are committed to continuing to negotiate over retiree healthcare.

Additionally, we agree that stakeholder education is an important process so we have included a side letter agreement on a Retiree Healthcare Stakeholder Working Group. Please note that if OE#3 agrees to this side letter, it does not act as a substitute for the meet and confer process.

We have also included language regarding an indemnification on the Section 115 retiree healthcare trust issue, which is subject to Council approval.

We look forward to hearing back from OE#3 if you accept this counterproposal.

Sincerely,



Alex Gurza
Deputy City Manager

Enclosure

CITY PROPOSAL – RETIREE HEALTHCARE

Proposed Language:

ARTICLE 27 RETIREE HEALTHCARE FUNDING AND BENEFITS

- 27.1 Effective June 28, 2009, the City and the Union ~~began transitioning~~ have agreed to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the “policy method”) to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan (“Plan”). The transition ~~shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning~~ began on June 28, 2009. The Plan’s initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan’s actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.3850 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 27.2 The Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement above.
- 27.3 The phase-in to the ARC shall be ~~divided in five steps (using a straight line method), each to be effective on the first pay period of the City’s fiscal year in each succeeding year.~~ The ~~the~~ first increment of the phase in shall be ~~which was~~ effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase the ARC may vary upward or downward. The Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members’ contribution rate is 4% of pensionable pay, the subsequent fiscal year’s contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, ~~by the end first pay period of the five year phase in~~ Fiscal Year 2014-2015, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.3850 (C) (1) and (3) of the San Jose Municipal Code.

27.4 The City has established a qualified 115 trust ("Trust"). Employee contributions will begin going into the Trust in time to avoid any potential of reaching the IRS limits on the existing medical benefits account or whenever the City receives advice of Tax Counsel or ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.

~~27.4 Until such time as a Trust is established, the City and employee contributions shall be made into the existing Medical Benefits Account for as long as the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties will meet to discuss alternative funding vehicles.~~

27.5 If employee contributions are deposited into the Trust prior to receiving a ruling from the IRS that the contributions can be treated as pre-tax and the City subsequently receives an IRS determination that the contributions should be treated as post-tax, the City agrees to indemnify any employee as to any IRS liability arising solely from the contributions that were taken as pre-tax prior to the IRS determination.

27.6 It is the objective of the parties that the Trust created pursuant to the above shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

27.7 Employees hired into full-time benefited positions on or after the first payperiod following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. For Fiscal Year 2013-2014, the City will pay the unfunded liability contribution that these employees would have otherwise paid had they gone into the retiree healthcare defined benefit program.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.

9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.

9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this agreement.

9.5 Healthcare Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party. This may include but is not limited to alternatives to reduce the cost of retiree healthcare benefits and options for current employees that comply with IRS regulations and whether or not the City will continue to pay for the unfunded liability contribution that new employees would have otherwise paid had they gone into the retiree healthcare defined benefit program.

9.5.2 Negotiations between the City and Union shall commence within 14 days upon notice of either party. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

5.5 Health Insurance

5.5.1 Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

~~5.5.2 Effective pay date July 1, 2011, the City pays eighty five percent (85%) of the cost of the lowest priced plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced plan. If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

5.5.2 Effective December 23, 2012, the City pays eight-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If

the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan.

| *Effective January 1, 2013, Kaiser Permanente Deductible 1500 HMO Benefit Plan 3800 will be available to employees represented by OE#3 in addition to the existing plan options.*

5.6 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans. Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

Side Letter Agreement

RETIREE HEALTHCARE STAKEHOLDER WORKING GROUP

PURPOSE

The City and the nine bargaining units that form the Retiree Healthcare Coalition, ("the Bargaining Unit(s)") have discussed the importance of education regarding the retiree healthcare issue including discussion of potential solutions. To this end, the City and the Bargaining Unit(s) will jointly schedule Retiree Healthcare Stakeholder Working Group sessions. The sessions are for the designated purpose of obtaining an understanding of the issues that can or may affect the City's retiree healthcare benefit including potential solutions.

AGREEMENT

The City and the Bargaining Unit(s) will jointly coordinate to conduct and facilitate the Retiree Healthcare Stakeholder Working Group sessions. These sessions shall include information that will help both parties address the challenge of retiree healthcare and the discussion of potential long-term solutions. The stakeholders shall include, but not be limited to, the City, the Bargaining Unit(s), employees, retirees and the public.

If the City and the Bargaining Unit(s) agree to begin the Retiree Healthcare Stakeholder Working Group, any outside consultants or subject matter experts appearing at any scheduled session shall be agreed upon by the City and the Bargaining Unit(s) before the scheduled appearance of such person(s). To the extent that the agreed upon person(s) require compensation, the costs shall be funded on an equally shared basis among the City and the Bargaining Unit(s).

The City and the Bargaining Unit(s) agree that this process will not supplant the meet and confer process regarding retiree healthcare. Prior to or concurrently with the Retiree Healthcare Stakeholder Working Group, negotiations between the City and the Bargaining Unit(s) shall commence within 14 days upon notice of either party. The City and the Bargaining Unit(s) shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

This Agreement is tentative and shall become effective only as part of the overall retiree healthcare agreement on, and only during the term of, any agreement reached between the City and the Bargaining Unit(s).

FOR THE UNION:

John Mukhar President AEA, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Dale Dapp President AMSP, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Matt Farrell President CAMP, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Frank Crusco Chief Steward IBEW, Local 332	Date
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Dan Rodriguez Business Representative IBEW, Local 332	Date
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