COUNCIL AGENDA: 06-09-09
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: May 21, 2009

Approved

Date 5/22/09

SUBJECT: **APPROVAL OF IMPLEMENTATION OF TERMS CONTAINED IN THE CITY'S LAST, BEST, FINAL OFFER TO THE OPERATING ENGINEERS, LOCAL NO. 3**

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Adoption of a resolution approving the implementation of the terms of the City's Last, Best, Final Offer for employees represented by Operating Engineers, Local No. 3, effective June 28, 2009.

OUTCOME

Adoption of the resolution and authorization to implement the terms contained in the City's Last, Best, Final Offer for employees represented by Operating Engineers, Local No. 3, effective June 28, 2009. Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

BACKGROUND

The City of San Jose had a labor agreement with the bargaining unit, Operating Engineers, Local No. 3 (OE#3), which expired on April 17, 2009. A complete copy of the prior agreement can be found at http://www.sanjoseca.gov/employeeRelations/moas/moa_oe3.pdf. OE#3 represents approximately 839 full time positions including Maintenance Worker I/II, Parking and Traffic Control Officer, Maintenance Assistant, Groundsworker and Plant Operator.

The City and OE#3 have been in negotiations for a successor agreement since January of 2009, and have met approximately seventeen times. The parties reached impasse on April 8, 2009, and began the impasse procedures under Employee-Employer Relations Resolution No. 39367, which is engaging in mediation. On May 11, 2009, the parties engaged in mediation and unfortunately, were unable to reach an agreement.

The City provided OE#3 with its Last, Best, Final Offer on May 14, 2009, which is attached.

Despite the dedication of time and effort into these negotiations, the City and OE#3 were unable to reach an agreement. Pursuant to the Meyers-Milias-Brown Act under California Government Code Section 3505.4, if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse

procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. OE#3 has been notified that this item was being placed on the Council Agenda for implementation of the terms contained in the City's Last, Best, Final Offer for employees represented by Operating Engineers, Local No. 3.

ANALYSIS

The following is a summary of the terms contained in the City's Last, Best, Final Offer that would be implemented for employees represented by Operating Engineers, Local No. 3:

Wages

Currently, there are employees represented by OE#3 who are not at top step and are eligible to receive a 5% pay increase during Fiscal Year 2009-2010.

Effective June 28, 2009, all employees represented by OE#3 will have step and merit increases frozen through June 30, 2010. This means that all wages for employees represented by OE#3 will be frozen through June 30, 2010. After June 30, 2010, employees will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

Health Insurance Premium

Currently, the City pays 90% of the cost of the lowest priced plan and the employee pays the remaining 10% of the premium for the lowest priced plan up to a maximum of $150 per month. Effective the beginning of pay period fifteen (15) of payroll calendar year 2009, employees' contribution for the lowest-priced medical insurance plan will be 10% of the premium with no cap.

This cost sharing formula has previously been agreed to by eight of the City's ten bargaining units.

Health Insurance Co-Pays

Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

a. Office Visit Co-pay: $10
b. Prescription Co-pay: $5 for generic and $10 for brand name (The Blue Shield HMO will continue to include $15 non-formulary drug co-pay.)
c. Emergency Room Co-pay: $50

This will result in Kaiser Office Visit Co-pays being increased from $0 to $10 and Blue Shield HMO Office Co-pays being increased from $5 to $10. In addition, Kaiser's Emergency Room Co-pay will increase from $0 to $50.

OE#3 is the only bargaining unit out of the City's ten bargaining units that does not have the above co-pays.

Retiree Healthcare

Effective June 28, 2009, employees represented by OE#3 will have the same retiree healthcare pre-funding terms as all other members in the Federated City Employees' Retirement System as was agreed to by seven bargaining units in March of 2009. OE#3 is the only bargaining unit who are members of the Federated City Employees' Retirement System that does not have the full pre-funding of retiree healthcare.

The current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") shall transition 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 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 3.28.380 (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.

The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.

The parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. 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 first increment of the phase-in shall be effective on June 28, 2009. Because of changes resulting from future actuarial valuations, the amount of each increase 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 of the five year phase-in, the City and plan members shall be contributing the full Annual

Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

The City will establish a qualified trust ("Trust") before June 27, 2010. 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. The Trust created shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

Please note that in 2009-2010, only one year of the phase in will occur.

Disciplinary Appeals

The Municipal Code and the City's Discipline Policy provide for appeals of formal discipline to the Civil Service Commission. This language will clarify that the appeal process for any disciplinary action shall be only the appeal process, which is described in the San Jose Municipal Code and City Policy Manual section regarding discipline.

EVALUATION AND FOLLOW-UP

Staff does not anticipate any follow-up actions necessary at this time.

PUBLIC OUTREACH/INTEREST

☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☑ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 2. This memorandum will be posted on the City's website for the June 9, 2009, Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

There is no ongoing known increased cost to these terms, except retiree healthcare. The implementation of these terms essentially "freeze" wages for employees represented by Operating Engineers, Local No. 3 and will result in a budget savings to the City of $1.02 million, and of that, it saves approximately $403,000 in the general fund These costs do not include the currently unknown cost increases for healthcare for active employees.

In regards to retiree healthcare, the City and employees represented by OE#3 will phase-in to fully fund the Annual Required Contribution (ARC) over a five-year period. This will result in an incremental increase of up to 0.75% of pensionable pay in each fiscal year for employees, and an incremental increase of up to 0.75% of pensionable pay in each fiscal year for the City. 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).

The maximum cost to the City in Fiscal Year 2009-2010 is approximately $213,000, based on the contribution rates that were approved by the Federated City Employees' Retirement Board on May 14, 2009. The incremental increase of the 2009-2010 City rate from the 2008-2009 City rate is 0.45% of pensionable pay.

Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager
EMPLOYEE RELATIONS

May 14, 2009

Bill Pope
Operating Engineers, Local No. 3
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: City's Last, Best, Final Offer

Dear Mr. Pope:

We first want to express our sincere appreciation for the dedication and work that OE#3 has put into the 2009 successor Memorandum of Agreement (MOA) negotiations. As you know, the City and OE#3 have dedicated a lot of time and effort into these negotiations, meeting approximately seventeen times and engaging in the mediation process on May 11, 2009. It is unfortunate that despite these efforts, we were unable to reach an agreement.

Enclosed please find the City's Last, Best, Final Offer. We also wanted to provide you with updated information, using Fiscal Year 2009-2010 proposed budget numbers, regarding what the cost savings would be for freezing step and merit increases for employees represented by OE#3. Freezing step and merit increases for Fiscal Year 2009-2010 for employees represented by OE#3 would save approximately $1.02 million, and of that, it saves approximately $403,000 in the General Fund.

It is the City's intent that the savings be used to maintain services that are proposed to be eliminated in the Fiscal Year 2009-2010 proposed budget. This would apply to budget proposals that contain services that are primarily provided by employees represented by OE#3 and would be used to reduce position eliminations. This is not a guarantee of no layoffs in solving the current $84.2 million deficit for Fiscal Year 2009-2010. Further, if the City's fiscal situation worsens because of impacts of the State budget or other factors, additional position eliminations may be necessary.

We also received your letter dated May 12, 2009, that indicated a desire to meet as provided for in Section 23(b) of the Employer-Employee Relations Resolution. As indicated in previous correspondence, the City is always willing to meet with OE#3, and we are willing to meet with OE#3 to discuss Section 23(b). However, it is our intent to take this Last, Best, Final Offer for Council approval in open session in early June and therefore, it is important that we meet soon. Please let us know your earliest availability.

Sincerely,

Gina Donnelly
Deputy Director of Employee Relations

Enclosure

c: Alex Gurza, Director of Employee Relations

2009 OE#3 NEGOTIATIONS
CITY LAST, BEST, FINAL OFFER

TERM

One year, effective the beginning of the first full pay period following ratification by the OE#3 membership and approval by the City Council.

STEP INCREASES

All OE#3 represented employees will have step and merit increases frozen through the term of the agreement. This means that all wages will be frozen through the term of this agreement for employees represented by OE#3. Upon the expiration of this agreement, employees will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

HEALTH INSURANCE

See Attached

DISCIPLINARY ACTION

See Attached

RETIREE HEALTHCARE

See Attached

ITY PROPOSAL #7, 8 and 9- HEALTH INSURANCE

Proposed Language

5.5 Health Insurance.

5.5.1 ~~The City will pay 90% of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay 10% of the premium for the lowest priced plan up to a maximum of $50.00 per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

~~Effective the beginning of pay period one (1) of payroll calendar year 2007, the City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one-hundred ($100) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one-hundred dollars ($100) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee.~~

Effective the beginning of pay period ~~one~~ fifteen (15) of payroll calendar year ~~2008~~2009, the City shall pay ninety (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage ~~up to a maximum of one-hundred and fifty dollars ($150) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one-hundred and fifty dollars ($150) per month the City shall pay the difference.~~ If an employee selects a plan other than the lowest priced plan, ~~any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee~~the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

5.5.2 Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

a. Office Visit Co-pay shall be increased to $10
b. Prescription Co-pay shall be increased to $5 for generic and $10 for brand name. (The Blue Shield HMO will continue to include $15 for non-formulary drug co-pay.)
c. Emergency Room Co-pay shall be increased to $50

5.5.3 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to approval by the City and ratification by the employee organization.

ITY PROPOSAL #30- DISCIPLINARY ACTION

Proposed Language

ARTICLE 28 DISCIPLINE

Disciplinary action is defined as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. Discipline will be initiated pursuant to the guidelines outlined in the City of San Jose Discipline Training Handbook. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense.

The City recognizes the process of timely, fair and consistent disciplinary actions is a key factor in maintaining positive employer-employee relations. It is in the interests of both parties to have allegations of misconduct investigated in a thorough and timely fashion.

.ıe appeal process for any disciplinary action shall continue to be only those in effect at the time of the execution of this agreement.

When an employee is being interviewed and the employee reasonably believes that the investigation is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.

No provisions of this Article ~~28~~ shall be subject to the grievance procedures of this ~~agreement~~Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE 27 RETIREE HEALTHCARE
(Current Article 27 and subsequent articles to be re-numbered)

27.1 The City and the Union agree 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 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 3.28.380 (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 City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.

27.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. 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 first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Union agree that 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 of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

27.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement 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 agree to meet and discuss alternative funding vehicles.

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

27.6 Healthcare Cost Mitigation. The Union hereby waives any potential right to meet and confer over retiree healthcare benefits for future hires.