CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

*Office of the City Manager*
EMPLOYEE RELATIONS

May 4, 2011

George Beattie
President
San Jose Police Officers' Association (SJPOA)
1151 North Fourth Street
San Jose, CA 95112

**RE: SJPOA Negotiations**

Dear George:

This letter is to follow up on the enclosed letter and counter proposal that we sent to you on Monday, May 2, 2011. There is significant time urgency given the very short time left to reach an agreement with the POA before the City Council must balance the budget for Fiscal Year 2011-2012. Balancing the budget requires solving a $115 million dollar deficit. As you know, this unfortunately will require significant reductions in City jobs and services, even if we achieve a 10% ongoing total compensation reduction with all City employees. If we do not achieve the 10% ongoing reduction in total compensation, the additional jobs and service cuts needed to balance the budget are severe. We know we share an interest in avoiding these additional job and service reductions.

Last year, we reached a one year agreement that was able to avoid the layoffs of police officers. Although the City was seeking a 10% reduction in total compensation during last year's negotiations, the City accepted the POA's proposal which was a 3.82% reduction in total compensation, with all but 0.67% of that as a one-time temporary reduction. Compared to the 3.82% total compensation reduction accepted by the POA last year, over 1,800 City employees and officials took a 10% total compensation reduction, with half of it being on-going. All 1,800 of those employees have also been contributing additional money to fund retiree healthcare benefits beginning on the same day as the POA began additional contributions.

When we reached last year's agreement, we sent you the enclosed letter on July 1, 2010. The letter stated that the City considered the POA's proposal last year as a "stop-gap" measure that avoided police officer layoffs last year and provided "...the City and the POA the opportunity to negotiate a new contract that includes on-going savings and reforms before additional permanent cuts become necessary next fiscal year." The enclosed City Council memo regarding last year's agreement also stated the same.

In order to provide sufficient time to negotiate ongoing solutions, we began negotiations for a new contract on January 12, 2011. Our goal was to reach an agreement on **ongoing**

solutions. Unfortunately, the POA was not able to make proposals on any issue until April 25th, and a second proposal on April 29th. The City provided a counter proposal on Monday, May 2nd, and we ask that the POA please advise us if the membership is willing to accept our latest package proposal to lessen the number of layoffs of police officers.

The City is not asking the POA to accept pay cuts beyond what is being asked of all City employees, and we appreciate consideration by the POA membership as to whether or not they are willing to accept the City's proposal in order to lessen layoffs of police officers and the public safety service reductions to the community. The City is willing to commit in writing that the savings from the 10% reduction in pay will be used to preserve police officer positions.

Because there continues to be questions about the definition of "ongoing", we would like to clarify again that ongoing does not mean forever. We are only asking that the 10% base pay reduction be treated the same as pay increases—they continue until a different agreement is negotiated or changed through an arbitration award. That is the same whether it is a one year agreement or a multi-year agreement. Since it would only be a one year agreement, we can begin negotiations immediately on the significant issues such as retirement reform and sick leave payout, as well as on pay for the contract that would begin on July 1, 2012. The POA could propose a pay increase at that time or whatever change in pay the POA chooses to propose.

We look forward to our meeting on Monday, May 9th, and hope that the POA membership will join other City employees in making the sacrifice of a 10% ongoing total compensation reduction in order to help solve the City's $115 million deficit and lessen the number of layoffs and service reductions to the community.

Sincerely,

Alex Gurza
Director of Employee Relations

Enclosures

cc: John Tennant, POA General Counsel
Jim Unland, POA Vice President
Franco Vado, POA Chief Financial Officer
John Robb, POA Board Member

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

*Office of the City Manager*
EMPLOYEE RELATIONS

May 2, 2011

George Beattie
President
San Jose Police Officers' Association (SJPOA)
1151 North Fourth Street
San Jose, CA 95112

**RE: SJPOA Negotiations**

Dear George:

Thank you for the package proposal provided by the POA to the City during our meeting the afternoon of April 29, 2011. As you know, I was surprised to receive media inquiries regarding the POA's press conference about this proposal prior to conclusion of our meeting during which the proposal was being presented to the City's negotiating team for the first time.

This latest proposal from the POA includes a temporary one-time base pay reduction of 10% beginning July 1, 2011. This means that on June 30, 2012, all employees represented by the POA would receive a 10% wage *increase*. While we appreciate the temporary 10% pay reduction, it only lasts one year. If the City had a temporary cash flow problem, this proposal would meet the City's needs. However, the City's fiscal problem is a serious ongoing structural shortfall in which our expenditures are outpacing our revenues for the 10th consecutive year. This will continue unless we bring our expenses in line with our revenues.

The Fiscal Year 2011-2012 Proposed Operating Budget, which is being released today, unfortunately contains a significant number of layoffs of employees in every City department, including Police Officers. That budget assumes achieving the 10% ongoing total compensation reduction with the POA. If we do not achieve this, there will be additional significant layoffs of Police Officers, potentially over 150 additional layoffs. We must not continue this pattern. A one-time 10% pay reduction only puts off the problem for one year, instead of finding an ongoing solution. With a one-time reduction, those additional officers subject to layoff will just be subject to layoff again next year. We do not believe this is fair to those employees or to the residents of San Jose.

The City Council's direction regarding achieving 10% ongoing total compensation reductions through labor negotiations included all 11 bargaining units and City management. On Friday, the City reached the fifth Tentative Agreement with the City's Building Inspectors' Union (ABMEI) that achieves a 10% **ongoing** compensation reduction. Agreements like the ones reached with the San Jose Fire Fighters, the Association of Engineers and Architects, the City Association of Management Personnel, the Association of Maintenance Supervisory

Personnel and ABMEI will help us achieve a balanced budget that to the extent possible minimizes service reductions to the community we serve. The City employees that have already agreed to a 10% ongoing total compensation reduction understand that this continues until a different agreement is negotiated. Just like when we negotiate salary increases, those increases don't expire at the end of the contract. If we negotiate a one year agreement with the POA, we will soon start negotiating for a new contract, and the POA can propose to modify the 10% ongoing total compensation reduction at that time.

The City remains hopeful that an agreement can be achieved with the POA. To that end, please find enclosed the City's counter proposal for your consideration. As you will note, in an effort to reach an agreement with the POA in order to avoid further layoffs of Police Officers, we have omitted from this package many of the proposals that are very important to the City. What is left is equivalent to no more than what we have achieved with five other bargaining units. While we understand these reductions are difficult for employees, a 10% ongoing total compensation reduction is what many employees took last year and have agreed to make ongoing. Many of these employees make less than employees represented by the POA.

We hope that you will seriously consider the City's enclosed proposal in order to avoid the further layoffs of Police Officers. If this offer is not accepted, please note that the City retains the right to add additional proposals and the City is not formally dropping any of the proposals we currently have on the table with the POA.

Please feel free to contact me should you have any questions.

Sincerely,

Alex Gurza
Director of Employee Relations

Enclosure

cc: John Tennant, POA General Counsel
Jim Unland, POA Vice President
Franco Vado, POA Chief Financial Officer
John Robb, POA Board Member

# CITY OF SAN JOSE AND SAN JOSE POLICE OFFICERS' ASSOCIATION
# CITY PACKAGE PROPOSAL

## TERM

July 1, 2011- June 30, 2012 (See Attached)

## WAGES

See Attached

## HEALTHCARE DUAL COVERAGE

See Attached

## MODIFIED DUTY ASSIGNMENT

See Attached

## CIVILIANIZATION/CONTRACTING OUT

See Attached

## AIRPORT POLICE SERVICES OUTSOURCING

See Attached

## SUBSIDY FOR PUBLIC TRANSIT

See Attached

## HOUSEKEEPING

See Attached

## SIDE LETTERS

- Sick Leave Payout
- Retirement Benefits for current and new employees
- Layoff
- Supplemental Retiree Benefits Reserve (SRBR)

## LAYOFF REINSTATEMENT LISTS

See Attached

## AGENCY FEE PROVISION

See Attached

***This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals.***

## CITY PROPOSAL- TERM

### ARTICLE 1 TERM

1.1 This Memorandum of Agreement (hereinafter, "Agreement") shall become effective July 1, ~~2010~~2011, except where otherwise provided, and shall remain in effect through June 30, ~~2011~~2012. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

~~1.2 Effective July 1, 2010, through June 30, 2011, there shall be no layoffs of positions represented by the POA. Although there shall be no layoffs during this period, the parties understand that the Fiscal Year 2010-2011 Budget includes the elimination of positions represented by the POA.~~

~~For purposes of this section, layoff shall be defined as involuntarily leaving City employment due to budget reductions.~~

~~Any positions restored through one-time savings will restore positions for Fiscal Year 2010-2011 only. These positions will be eliminated on June 30, 2011.~~

## CITY PROPOSAL– WAGES

## ARTICLE 5 WAGES AND PREMIUM PAY

5.1 Effective June 26, 2011, all salary ranges for employees represented by the POA shall be decreased by approximately 10%. This will result in the top and bottom of the range of all classifications represented by the POA being 10% lower. All employees will receive a 10% base pay reduction.

~~5.1 ONE-TIME ADDITIONAL RETIREMENT CONTRIBUTIONS~~

~~Effective June 27, 2010 through June 25, 2011, all employees represented by the POA will make an additional retirement contribution in the amount of 5.25% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Police & Fire Department Retirement Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 5.25% of pensionable compensation, as illustrated below:~~

| ~~Police and Fire Department Retirement (Police) (Fiscal Year 2010-2011)~~ | | | |
|---|---|---|---|
| | ~~City~~ | ~~Employee~~ | ~~Total~~ |
| ~~Current Contribution Rates~~ | ~~44.58%~~ | ~~15.57%~~ | ~~60.15%~~ |
| ~~Contribution Rates with Additional Employee Contributions~~ | ~~39.33%~~ | ~~20.82%~~ | ~~60.15%~~ |

~~Note: Additional contributions made by employees do not affect the retiree healthcare rates.~~

~~TREATMENT OF ADDITIONAL EMPLOYEE CONTRIBUTIONS~~

~~These contributions shall be treated in the same manner as any other employee contributions. Accordingly, the intent of these additional payments will be made on a pre-tax basis through payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.~~

~~IMPLEMENTATION OF ADDITIONAL RETIREMENT CONTRIBUTIONS AND MISSED CONTRIBUTIONS~~

~~It is the intent of the parties that the employees pay the entire annual amount of the additional retirement contributions for the 2010-2011 Fiscal Year. Since the additional employee contributions will not be implemented by June 27, 2010, when the additional employee contributions are implemented in the City's payroll system the Finance Department will compute the rate that will generate the total amount of additional retirement contributions over the~~

~~remaining pay periods in the fiscal year as if the contribution rate had been implemented on June 27, 2010.~~

~~For example, if the additional contributions do not begin until August 22, 2010, (pay period #18) the additional employee contributions for each of the subsequent pay periods in the 2010-2011 Fiscal Year will be recalculated by the Finance Department so that 100% of the additional employee contributions are made by the end of the fiscal year.~~

~~The parties understand that in order to implement this provision, an amendment must be made to the Police & Fire Department Retirement Plan that requires an ordinance amending the San Jose Municipal Code. In addition, the parties understand that the City will request that the Police & Fire Department Retirement Board have its actuary confirm that an increase of the employee contribution will reduce the City's contribution rate by a commensurate amount.~~

~~CONTINGENCY PROVISION~~

~~In the event that the additional employee retirement contributions described above are not implemented for any reason by October 1, 2010, or the Police & Fire Department Retirement Board's actuary concludes that the City's contribution rate could not be reduced by a commensurate amount, the equivalent amount of total compensation shall be taken as a base pay reduction and will increase on a pro-rata basis over the remaining pay periods in the fiscal year to achieve the equivalent total compensation reduction.~~

~~In the event that the additional employee retirement contributions described above are ceased for any reason thereafter, or the Police & Fire Department Retirement Board's actuary concludes that the City's contribution rate could not be reduced by the commensurate amount after beginning such deductions, the equivalent amount of total compensation shall be taken as a base pay reduction.~~

9.1 Employees shall receive a uniform allowance not to exceed $675 annually. Payment shall be made during the first two pay periods of each month, in the amount of $28.12 per biweekly pay period. If an eligible employee is on unpaid leave for a period of one (1) full pay period or more, the employee will not receive uniform allowance pay for that period. ~~Effective September 5, 2010 through June 25, 2011, employees shall be ineligible to receive uniform allowance payments.~~

## CITY PROPOSAL- HEALTHCARE DUAL COVERAGE

8.1 Health Insurance Coverage

8.1.5 ~~Effective January 1, 2011, a~~An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

8.2 Dental Plan

8.2.3 ~~Effective January 1, 2011, a~~An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

## CITY PROPOSAL– MODIFIED DUTY ASSIGNMENT

## ARTICLE 39 MODIFIED DUTY ASSIGNMENT

~~Modified duty assignments shall be governed by the Consent Decree dated June 21, 2005, for the term of this agreement.~~

Effective July 1, 2011, the number of exempt officer positions shall be reduced to 0.

## CITY PROPOSAL– CIVILIANIZATION/CONTRACTING OUT

## ARTICLE 51 MODIFICATION OF BARGAINING UNIT WORK

~~51.1 City Attorney's Office. Officers and Sergeants assigned to the City Attorney's Office may be reassigned to the Police department but such positions will not be civilianized.~~

~~51.2 For optimal resource management, the City, in its discretion, may add civilian personnel to perform the work currently performed by sworn personnel provided the following:~~

~~51.2.1 The POA bargaining unit will not be reduced in number of positions as a result of that action,~~

~~51.2.2 The work is not normally associated with sworn Peace Officer status and does not require a P.O.S.T. certificate. Examples of duties which are normally associated with Peace Officer status include the following:~~

~~-criminal investigations~~
~~-patrol-related functions~~
~~-emergency services~~
~~-community policing~~
~~-training of sworn personnel on public safety-related issues~~
~~-processing of prisoners, and~~

~~51.2.3. The City conducts a meeting with the POA to discuss operational impact prior to making a final decision.~~

~~51.3 It is understood by the parties that Investigative Aides and Community Service Officers are applicable to subsection 51.2.2 of this provision.~~

~~51.4 During the term of the 2008-10 agreement no more than fifteen (15) sworn positions will be "civilianized" in accordance with subsection 51.2. Any further civilianization, as defined by this section, would be subject to the meet and confer process at the expiration of this MOA.~~

~~51.5The parties will evaluate the effects and success of subsections 51.2-51.4 at the end of this agreement. Agreed upon modifications, if any, shall be included in the following agreement.~~

51.1 The City has the discretion to contract out and/or civilianize twenty positions during the term of this Agreement.

51.2 Any contracting out and/or further civilianization of positions represented by the POA during the term of this Agreement would be subject to the meet and confer process. The City will provide advance notice to the POA and the opportunity to demand to meet and confer regarding contracting out and/or further civilianization of work currently performed by bargaining unit members.

## CITY PROPOSAL– AIRPORT POLICE SERVICES OUTSOURCING

*The POA will no longer be providing Airport Police Services and this service will be contracted out.*

## CITY PROPOSAL – PUBLIC TRANSIT SUBSIDY (ECO-PASS AND SUBSIDIZED COMMUTER CHECK VOUCHER PROGRAM)

### *ECO-Pass*

*After calendar year 2011, the City will no longer provide employees an ECO-Pass. This means that any employee in possession of a 2011 ECO-Pass provided by the City may continue its use through calendar year 2011. Beginning calendar year 2012, the City will cease providing an ECO-Pass.*

### *Commuter Check Program*

*Upon exhaustion of the current supply of Commuter Check Vouchers, the Vouchers will no longer be available to employees for purchase from the City. This means that the subsidized Commuter Check Voucher Program is eliminated after the current supply of Commuter Check Vouchers are exhausted.*

## CITY PROPOSAL – HOUSEKEEPING

5.2.9 Anti-Terrorist Training Pay

~~5.2.10.1Each employee assigned to classifications represented under this Memorandum of Agreement who on an annual basis successfully completes the annual training offered by the Police Department in Police Anti-Terrorist Tactics shall be paid, for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this agreement, additional compensation equal to five (5%) percent of the employee's base pay. Each eligible employee must certify annually, every September 1, by the Police Department as having successfully completed the annual training in order to be eligible to continue to receive the pay. The incentive pay will begin the first day of the pay period following the date the Police Department submits certification to the City's Finance Department for the employees who have successfully completed the training. Employees will not be eligible for this premium until such time he/she successfully completes the annual training and submits verification to the Finance Department. No overtime compensation per Article 13.6 shall be provided for Officers' completion of this training.~~

~~5.2.10.2This incentive pay shall be pensionable.~~

~~5.2.10.3The five (5%) percent incentive pay will be included in salary surveys submitted by each party in future negotiations and arbitration, if applicable.~~

~~5.2.10.4~~]Effective March 22, 2009, the 5% Anti-Terrorist Training pay will be rolled into base pay in recognition of the additional training that all employees represented by the POA receive related to Police Anti-Terrorist Tactics. Employees must successfully complete the Police Department's annual Police Anti-Terrorist Tactics training each year as a condition of continued employment. There shall be no additional compensation for the completion of Anti-Terrorism Training.

## ARTICLE 8 INSURANCE BENEFITS

8.1 Health Insurance Coverage

8.1.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents.

~~8.1.2The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. 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 for employee or for employee and dependent coverage.~~

~~8.1.3~~8.1.2 ~~Effective December 26, 2010, t~~The City will pay eighty-five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. 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 for employee or for employee and dependent coverage.

~~8.1.4~~8.1.3 ~~Co-pays for all available HMO plans shall be as follows~~A $25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

~~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~~

~~Effective January 1, 2011, co-pays for all available HMO plans shall be as follows:~~

a. Office Visit Co-pay shall be increased to $25.
b. Prescription Co-pay shall be increased to $10 for generic and $25 for brand name.
c. Emergency Room Co-pay shall be increased to $100.
d. Inpatient/Outpatient procedure copay shall be increased to $100.

8.3 Payment-in-Lieu of Health and/or Dental Insurance Program

8.3.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

8.3.2 ~~Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty (50%) percent of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty (50%) percent of that contribution.~~

~~Effective December 26, 2010, e~~Employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following per payperiod.

| | Health in-lieu | Dental in-lieu |
|---|---|---|
| If eligible for family coverage | $221.84 | $19.95 |
| If NOT eligible for family coverage | $89.09 | $19.95 |

## ARTICLE 23 HOLIDAYS

23.1 ~~Subject to the provisions of Section 23.2 of this Article, each employee shall be entitled to receive, as a holiday benefit from and after July 14, 1985, in lieu of any other holidays (excepting any other days proclaimed or designated by the Council as holidays for which full-time employees will be entitled to holiday leave), 3.3847 hours of time off from duty for each biweekly pay period from and after July 14, 1985. Said holiday benefit shall be given to each employee at the time to be determined by the City Manager, in his/her discretion, or by the Chief of Police with the approval of the City Manager, either before or after the biweekly pay period for which such benefit is provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the calendar year within which falls the biweekly pay period for which such benefit is given, nor later than twenty-six (26) biweekly pay periods immediately following the biweekly pay period for which such benefit is given.~~

~~23.2If, at any time on or before the expiration of twenty-six (26) biweekly pay periods immediately following the biweekly pay period during and for which any full-time employee becomes entitled to time off duty as a holiday benefit under the provisions of 23.1 of this Article, the City Manager shall find or determine that to give any such benefit would seriously impair the efficiency of the Police Department, the City Manager may order that such employee shall receive, in lieu of the holiday benefit to which he/she would otherwise be entitled for any biweekly pay period under the provisions of Section 23.1, as extra holiday compensation 5.623% of his/her regular salary during said biweekly pay period of full-time employment.~~

23.2.1 ~~The wage increase effective July 2, 2006 includes consideration specific to the settlement of the Holiday-in-Lieu grievance filed on August 2, 2002. The terms of this settlement are set forth in a separate agreement dated December 7, 2005.~~

23.3 Effective June 28, 2009, all classifications represented by the POA shall receive a 5.623% special pay adjustment in place of the holiday-in-lieu compensation ~~provided in 23.2 above~~. Beginning June 28, 2009 and continuing thereafter, the holiday ~~benefit~~ in

lieu compensation ~~provided in 23.1 and 23.2 above~~ shall cease to apply to all classifications represented by the POA. The 5.623% special pay adjustment shall be added to the general wage increase effective on June 28, 2009, and shall not be compounded. It is expressly understood that the 5.623% special pay adjustment is compensation for all employees in classifications represented by the POA in lieu of holiday benefits. There shall be no additional holiday compensation.

## ARTICLE 30 VACATIONS

30.1 Each eligible full-time employee shall be granted vacation leave with pay in accordance with the following:

30.1.1 Vacation Accrual. Each employee shall accrue a leave of absence with full pay for vacation purposes, in the amount specified below for each cycle of twenty-six (26) full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of his/her employment as specified below:

| Years of Service | Hours of Vacation per 26 Pay Period Cycle |
|---|---|
| 1st 5 years | 80 hours |
| 6th year - 10th year | 120 hours |
| 11th year - 12th year | 140 hours |
| 13th year - 14th year | 160 hours |
| 15th year or more | 180 hours |

30.1.2 ~~Carry-Over of~~ Vacation Leave

~~An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. This carryover process shall expire at the end of the 2009 payroll calendar year.~~

~~Effective the first payperiod of payroll calendar year 2010,~~ Eemployees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.

~~Effective the first payperiod of payroll calendar year 2010, a~~Any ~~employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.~~

30.1.3 ~~Effective the first payperiod of payroll calendar year 2010, e~~Employees will only be allowed to use vacation that has already been accrued.

~~7.1.4 Each person who as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of fifteen (15) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.2.~~

# Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

## SICK LEAVE PAYOUT

The City and the San Jose Police Officers' Association agree to continue meeting and conferring on sick leave payout (Article 31.2) for current and future employees.

Either the City or Union may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

Alex Gurza Date
Director of Employee Relations

FOR THE UNION:

George Beattie Date
President, San Jose Police Officers' Association

# Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

## RETIREMENT REFORM

The City and the San Jose Police Officers' Association agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or Union may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

Alex Gurza Date
Director of Employee Relations

FOR THE UNION:

George Beattie Date
President, San Jose Police Officers' Association

# Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

## LAYOFF

Either the City or Union may provide notice to the other of its request to meet and confer on modifications to the City's layoff process and procedure, including the provisions of the Layoff article in the Memorandum of Agreement. Upon such notice, the parties shall meet within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

Alex Gurza Date
Director of Employee Relations

FOR THE UNION:

George Beattie Date
President, San Jose Police Officers' Association

# Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

## SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the San Jose Police Officers' Association agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Police and Fire Department Retirement Plan.

Either the City or Union may provide notice to the other of its request to discuss the SRBR program. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or Union receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, the parties shall submit such issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

Alex Gurza Date
Director of Employee Relations

FOR THE UNION:

George Beattie Date
President, San Jose Police Officers' Association

## UNION PROPOSAL- LAYOFF REINSTATEMENT LIST

22.6 Layoff Reinstatement Eligible List

22.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a reinstatement eligible list in inverse order of seniority; i.e., the person with the greatest seniority on the reinstatement eligible list for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the reinstatement eligible list unless such person has reinstatement rights under the provisions of this Topic to a higher class than the one in which the reinstatement is being refused.

22.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the reinstatement eligible list for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.

22.6.3 Any person who is reinstated to a class, which is the highest class to which he/she would have been entitled at the time of layoff, shall have his/her name removed from the reinstatement eligible list.

22.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the reinstatement eligible list, providing, however, that such person within the two-year period specified herein may request that his/her name be replaced on the reinstatement eligible list and such person's name may, in the sole discretion of the Director of Human Resources, be returned to the reinstatement eligible list.

22.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a reinstatement eligible list for a period longer than ~~two~~ three years from the effective date of such person's most recent layoff.

## UNION PROPOSAL- AGENCY FEE PROVISION

25. Agency Fee

25.1 Employee Rights

The City and the Association recognize the right of employees to form, join, and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

Accordingly, membership in the Association shall not be compulsory. An employee has the right to choose, either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 25.5 listed below.

25.2 Employee's Obligation to Exclusive Representation

An employee who is a member of the Union on July 1, 2011, and any employee who becomes a member after July 1, 2011, shall maintain such membership.

Any person in a classification represented by the Association must, within thirty (30) days after their employment, submit to the City either:

1. A signed authorization to deduct dues as a member of the Union; or
2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 6.6.5(1) below. In this case, the employee must designate a charity listed in Section 6.6.5(2) below to which the appropriate amount will be paid through payroll deduction.

If a person fails to make any of the designations set forth above within the thirty (30) day period, they will be given notice by the City that the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the Association agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Association in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Association.

During the period June 1, 2012, through and including June 30, 2012, any employee who is a member of the Association may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Agreement.

25.3 Definition of Agency Fee

The Agency Fee collected from non-member bargaining unit employees pursuant to Section 6.6.2 shall be limited to the Association (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Association as the Agency Fee.

25.4 Employees Exempted from Obligation to Pay Association

1. Any employee shall be exempted from the requirements of Section 25.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.

2. Such exempt employee shall, as an alternative to payment of an Agency Fee to the Association, pay an amount equivalent to such Agency Fee to either:

   a. The United Way; or,
   b. Combined Health Appeal (C.H.A.); or,
   c. Any charity jointly agreed upon by the City and the Association. Such charities cannot be affiliated in any manner with the Association, nor can such charity be related to an established religious organization.

Employees requesting an exemption from paying an agency fee must submit a request in writing and provide verification of such membership in a qualifying bona fide religion, body or sect to the Municipal Employee Relations Officer, or designee. The Municipal Employee Relations Officer, or designee, shall provide notification to the Association of the determination within five (5) calendar days.

25.5 Hold Harmless

The Association shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Agreement pertaining to Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

25.6 Rescission of Agency Fee Provisions

Pursuant to Government Code Section 3502.5, this Agreement may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least 30% of the employees covered by this Agreement; (2) such vote shall be by secret ballot;

and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

## ~~ARTICLE 35 MAINTENANCE OF MEMBERSHIP~~

~~35.1 Except as otherwise provided herein, each employee who, on August 3, 2010, is a member in good standing of the Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Organization as a condition of retaining membership.~~

~~35.2 Any employee who, on August 3, 2010, is not a member of the Organization or any person who becomes an employee after August 3, 2010, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.~~

~~35.3 Any employee who, on August 3, 2010, was a member of the Organization, and any employee who subsequently becomes a member may, during the period beginning May 1, 2011 through May 31, 2011, resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the Director of Employee Relations with a copy to the Organization.~~

~~35.4The Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.~~

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

*Office of the City Manager*
EMPLOYEE RELATIONS

July 1, 2010

George Beattie
President
San Jose Police Officers' Association
1151 North Fourth Street
San Jose, CA 95112

**RE: San Jose Police Officers' Association (POA) Negotiations**

Dear George:

As you know, the City Council approved the Mayor's Budget Message in March 2010 that included seeking a 10% reduction in total compensation costs of all City employees. Achieving a 10% reduction in total compensation costs from all employees would yield significant savings that would be used to preserve jobs of City employees and minimize the reduction in services provided to the community. Since receiving that direction from the City Council, the City has presented the POA with package proposals that achieve a 10% reduction in total compensation.

The City also proposed a 10% reduction in total compensation to all other bargaining units that had open contracts. The City was successful in achieving a 10% total compensation reduction from all of those bargaining units, except for the police and fire unions. In addition, the City Council, Council Appointees, and unrepresented employees will be taking a 10% reduction in total compensation in Fiscal Year 2010-2011. This includes 5% ongoing savings and 5% one-time savings. The savings achieved from these concessions have been used to preserve jobs of City employees and the important services these employees provide to the community.

Unfortunately, the City and the POA have been unable to reach an agreement that achieves a 10% total compensation reduction. The contract with the POA expired yesterday, and if no agreement is reached, the parties would ultimately proceed to binding interest arbitration as required under the City Charter. As you know, the arbitration process takes a significant amount of time and resources (most of the City's prior interest arbitrations have taken over a year from the declaration of impasse to the issuance of an award). Since the layoffs are effective July 30, 2010, by the time an arbitration award was issued, police officers who are subject to layoff as a result of the Fiscal Year 2010-2011 budget would not have been employed by the City of San Jose for many months.

On June 30, 2010, the POA made a proposal to the City that yields enough savings to avoid layoffs currently planned for Fiscal Year 2010-2011. However, the POA's proposal falls significantly short of achieving a 10% reduction in total compensation (5% ongoing, 5% one-time), providing on-going savings equivalent to approximately 0.60% of total compensation and approximately 3.35% in one-time savings. Because the concessions proposed by the POA

would generate almost exclusively one-time savings, those concessions would preserve the police officer positions currently eliminated in the Fiscal Year 2010-2011 Budget for only one additional year. Therefore, absent additional ongoing concessions, the positions of employees who would avoid layoff through one-time savings would be eliminated effective June 30, 2011, and would not be included in the budget development for Fiscal Year 2011-2012.

It is also important to note that although the POA's proposal would delay the current proposed layoffs for eleven months, it would not avoid the immediate elimination of a significant number of vacant police officer positions that results in the loss of public safety services to the community. This is a loss in the number of sworn police personnel that the City hoped could have been avoided through a 10% reduction in total compensation.

Since the POA has indicated that the proposal dated June 30, 2010, is as much as the POA is willing to offer in concessions, the City is left with the very difficult decision to settle for the amount the POA is willing to offer or to proceed to binding interest arbitration after the layoffs of police officers have taken effect. Since the City would be entering into only a one year contract with the POA, the City considers the POA's proposal as a "stop-gap" measure to avoid police officer layoffs temporarily while providing the City and the POA the opportunity to negotiate a new contract that includes on-going savings and reforms before additional permanent cuts become necessary next fiscal year. Therefore, although we had hoped the POA would agree to the 10% total compensation reduction as did all non-sworn bargaining units with open contracts, if the POA membership pre-ratifies the POA's June 30th proposal no later than July 19, 2010, the City Manager will recommend to the City Council approval of the POA's proposal on August 3rd so that the currently planned layoffs of police officers can be delayed.

Please note that if we do not reach an agreement that is ratified by the membership and approved by the City Council on August 3rd, we will meet to discuss next steps. As we have discussed, if we proceed to binding interest arbitration as required under the City Charter, neither the City nor the POA will be in any way limited to the items contained in the POA's June 30th proposal and will not be limited to any of the issues and proposals made during negotiations.

We look forward to continuing to work with the POA to achieve long term savings and structural solutions.

Sincerely,

Alex Gurza
Director of Employee Relations

c: John Tennant, General Counsel
Jim Unland, POA Vice President
Franco Vado, POA Director
Aracely Rodriguez, City Negotiating Team Member
Deanna Santana, City Negotiating Team Member
Deputy Chief Dave Cavallaro, City Negotiating Team Member

COUNCIL AGENDA: 8-3-10
ITEM: 3.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Alex Gurza
Jennifer Maguire

**SUBJECT:** SEE BELOW

**DATE:** July 19, 2010

Approved

Date 7/19/10

**SUBJECT:** **APPROVAL OF THE TERMS OF AN AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)**

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

## RECOMMENDATION

1. Adoption of a resolution to approve the terms of a Memorandum of Agreement with the San Jose Police Officers' Association (SJPOA) and authorizing the City Manager to execute the agreement with a term of July 1, 2010 to June 30, 2011.

2. Restoration of 70 Police Officer positions as follows:
   a. Restore 62 Police Officer positions, on a one-time basis, effective August 1, 2010 through June 30, 2011.
   b. Restore 8 Police Officer positions ongoing, effective August 1, 2010.

3. Adoption of the following 2010-2011 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
   a. Decrease the Police Department Personal Services appropriation by $883,954.
   b. Increase the Police Department Non-Personal/Equipment appropriation by $331,504.
   c. Decrease the Office of the City Attorney Personal Services appropriation by $20,932.
   d. Establish a 2011-2012 Future Deficit Earmarked Reserve of $1,230,000.
   e. Decrease the Unemployment Insurance Earmarked Reserve by $985,000.
   f. Decrease the revenue estimate for Transfers and Reimbursements by $301,094.
   g. Decrease the revenue estimate for Licenses and Permits by $27,288.

4. Adoption of the following 2010-2011 Appropriation Ordinance amendments in the Airport Maintenance and Operations Fund (Fund 523):
   a. Decrease the Transfer to the General Fund by $301,094.
   b. Increase the Ending Fund Balance by $301,094.

5. Adopt a resolution amending the Schedule of Fees and Charges (Resolution No. 72737, as amended) to decrease the Cardroom Card Table Fee from the adopted $24,755 per table to an adjusted fee of $24,413 per table.

## OUTCOME

Adoption of the resolution and authorization to execute the successor agreement would implement a collective bargaining unit agreement between the City and the San Jose Police Officers' Association (POA).

## BACKGROUND

In November 2009, the City Council in open session approved a goal of reducing the total ongoing employee compensation by 5%. In March 2010, the City Council approved the Mayor's Budget Message, which expanded the goal to include an additional 5% in personnel cost savings, including ongoing or one-time savings. As a result, the goal was to achieve a total compensation reduction of 10%. "Total compensation" is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance and other benefits. Total compensation is calculated using budgeted salary and fringe benefit costs for the bargaining unit.

The POA represented approximately 1362 full time budgeted positions in Fiscal Year 2009-2010. This unit includes employees in the classifications of Police Recruit, Airport Police Officer, Police Officer, Police Sergeant, Police Artist, Police Lieutenant, Police Captain and Deputy Chief of Police.

The Memorandum of Agreement between the City of San Jose and the POA expired on June 30, 2010. The City and the POA commenced negotiations for a successor Memorandum of Agreement (MOA) in January 2010. The City and the POA were unable to reach an agreement that achieves a 10% total compensation reduction before the City Council approved the Fiscal Year 2010-2011 Budget. The Fiscal Year 2010-2011 Budget approved by the City Council includes the elimination of 159 sworn police officer positions. As a result, approximately 70 police officers are subject to layoff effective July 30, 2010.

Even though the City Council approved the Fiscal Year 2010-2011 Budget, the City Council directed staff to continue to negotiate with the POA in an attempt to reach an agreement that would avoid layoffs. If the City and the POA were unable to reach an agreement, the parties would proceed to binding interest arbitration. It would be many months before the arbitration hearings would take place, and the layoffs that are effective July 30, 2010, would have already occurred. Therefore, by the time an arbitration award was issued, police officers who are subject to layoff as a result of the Fiscal Year 2010-2011 Budget would not have been employed by the City of San Jose for many months and possibly over one year.

During these continued negotiations, the POA made a proposal to the City on June 30, 2010, that when combined with the Mayor's June Budget Message Police Officer attrition funding as approved by the City Council with adoption of the Fiscal Year 2010-2011 Budget, yields enough savings to delay the 70 layoffs currently planned for Fiscal Year 2010-2011. However, the POA's proposal

falls significantly short of achieving a 10% reduction in total compensation. The POA indicated that its June 30, 2010, proposal, which represents a total compensation reduction of less than 4% is as much as the POA is willing to offer. Since the concessions proposed by the POA would generate almost exclusively one-time savings, those concessions would preserve a portion of the police officer positions that are currently eliminated in the Fiscal Year 2010-2011 Budget for only one additional year. Therefore, absent additional ongoing concessions, the positions of employees who would avoid layoff through one-time savings would be eliminated effective June 30, 2011, and would not be included in the budget development of Fiscal Year 2011-2012.

Although the POA's proposal would delay the current proposed layoffs through June 30, 2011, it would not avoid elimination of a significant number of vacant police officer positions, which results in the loss of public safety services to the community. This is a loss in the number of sworn police personnel that the City hoped could have been avoided through a 10% reduction in total compensation for employees represented by the POA.

In order to avoid the layoff of 70 police officer positions, the City Administration asked the POA to take its June 30, 2010 proposal to its membership for ratification. The POA took its proposal to the membership and notified the City Administration on July 13, 2010, that approximately 75% of the POA membership voted in favor of the proposal. Therefore, the POA proposal dated June 30, 2010 has been ratified. Since the tentative agreement is only a one year contract the City considers the tentative agreement a "stop-gap" measure to avoid police officer layoffs temporarily while providing the City and the POA the opportunity to negotiate a new contract that includes on-going savings and reforms before additional permanent cuts become necessary for the next fiscal year. A complete copy of the tentative agreement is attached.

## ANALYSIS

The following is a summary of the terms contained in the June 30, 2010, proposal from the POA:

| | |
|---|---|
| **Temporary Additional Retirement Contributions** | Effective June 27, 2010 through June 25, 2011, employees will make an additional retirement contribution in the amount of 5.25% of pensionable compensation, and this amount will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability. This additional employee retirement contribution would be in addition to the employee retirement contribution rates as approved by the Police and Fire Department Retirement Board.<br><br>In the event the additional retirement contribution cannot be implemented or is ceased for any reason, employees would instead have their base pay temporarily reduced by the equivalent amount. |
| **Temporary Uniform Allowance Freeze** | Currently, employees receive a uniform allowance not to exceed $675 annually. Payments are made during the first two pay periods of each month, in the amount of $28.12 per biweekly pay period. |

Effective September 5, 2010 through June 25, 2011, employees shall be ineligible to receive uniform allowance payments.

**Healthcare Cost Sharing**

Currently, the City pays ninety (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee pays ten (10%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

Effective December 26, 2010, the City will pay eighty five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen (15%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

**Healthcare HMO Plan Design**

The current HMO Plan Design provides for $10 office visit co-pay, $5 generic and $10 brand name prescription co-pays, and a $50 emergency room co-pay.

Effective January 1, 2011, co-pays for all available HMO plans shall be as follows:

a. $25 office visit co-pay
b. $10 generic/$25 brand name prescription co-pay
c. $100 emergency room co-pay
d. $100 inpatient/outpatient procedure co-pay

**Healthcare Dual Coverage**

Effective January 1, 2011, employees may no longer be simultaneously covered by City-provided medical and/or dental benefits as a City employee and as a dependent of another City employee or retiree.

**Healthcare Payment-In-Lieu**

Currently, employees who have other health and/or dental coverage are eligible for a health-in-lieu and/or dental-in-lieu amount of 50% of the City's premium. This results in a formula that increases as the City's costs towards healthcare increases. The current in-lieu amounts are as follows:

| | Health In-Lieu | Dental In-Lieu |
|---|---|---|
| If eligible for family coverage: | 250.31 | 24.44 |
| If NOT eligible for family coverage: | 100.54 | 24.44 |

Effective December 26, 2010, employees who qualify for and participate in payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

| | Health In-Lieu | Dental In-Lieu |
|---|---|---|
| If eligible for family coverage: | 221.84 | 19.95 |
| If NOT eligible for family coverage: | 89.09 | 19.95 |

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed NOT eligible for family coverage.

This changes the current formula from a percentage to a fixed dollar amount and will reduce the increases in the health in-lieu program in the future.

**No Layoffs During Fiscal Year 2010-2011**

Effective July 1, 2010 through June 30, 2011, there shall be no layoffs of positions represented by the POA. For purposes of this section, layoff shall be defined as involuntarily separation of City employment due to budget reductions.

Although there shall be no layoffs during this period, the parties understand that the Fiscal Year 2010-2011 Budget includes the elimination of positions represented by the POA. Any positions restored through one-time savings will restore positions for Fiscal Year 2010-2011 only. These positions will be eliminated on June 30, 2011.

## EVALUATION AND FOLLOW-UP

None.

## POLICY ALTERNATIVES

The Meyers-Milias-Brown Act (MMBA) governs labor relations for local government agencies in California. The MMBA states:

> 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. (California Government Code §3505.4)

Under City Charter, Section 1111, however, the City is required to proceed to binding interest arbitration with the San Jose Police Officers' Association (POA) and International Association of Fire Fighters, Local 230 where no agreement has been reached after impasse procedures. Binding interest arbitration has been included in the City Charter since 1980 when voters passed a ballot measure to include it for public safety unions in San Jose. Therefore, the City does not have the option to implement the terms of the City's Last, Best and Final Offer, as it can do with all other non-public safety bargaining units.

The City Charter requires the City to proceed to binding interest arbitration if no agreement is reached on wages, hours, or terms and conditions of employment after negotiation in good faith

and following the procedures outlined in the Employee-Employer Relations Resolution (#39367). Therefore, if no agreement was reached between the City and the POA, either party would declare impasse and follow the procedures outlined in the Resolution. An agreement would still be possible during the impasse procedures, however, this process takes time and layoffs for Fiscal Year 2010-2011 could not be avoided.

Once the impasse procedures are complete, the City would proceed to binding interest arbitration. City Charter Section 1111 provides that the arbitration process includes a Board of Arbitrators comprised of a City representative, employee organization representative, and a neutral arbitrator selected by the City and Union who serves as the Chairman of the Board. At the conclusion of the arbitration hearings, the City and Union submit last offers on each issue. The Arbitration Board ultimately decides each issue by majority vote. The arbitration award is final and binding.

The City Council approved a Fiscal Year 2010-2011 Budget that included the difficult decision to cut services to the community and eliminate hundreds of positions throughout the City, including police officer positions. Approximately 70 sworn officers are currently subject to layoff effective July 30, 2010. If the City proceeded to binding interest arbitration, the police officers who are subject to layoff as a result of the Fiscal Year 2010-2011 Budget will separate from City service for an unknown period of time, if not permanently. Further, the cost implication of any arbitration award would be unknown for many months.

The POA presented a proposal to the City Administration that would delay the layoff of 70 police officers currently scheduled for separation from City service effective July 30, 2010, and would preserve some of the public safety services provided to the community. The City Administration is recommending approval of the ratified POA proposal as a stop-gap measure to avoid police officer layoffs temporarily while providing the City and the POA the opportunity to negotiate a new contract that includes on-going savings and reforms before additional permanent cuts become necessary for the next fiscal year.

## 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 1. This memorandum will be posted on the City's website for the August 3, 2010, Council Agenda.

## COORDINATION

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

## COST IMPLICATIONS

The terms of the recommended agreement between the City and the POA generate savings of $8.5 million in 2010-2011 which represents 3.82% of total compensation (base pay, premium pays, retirement contributions, health insurance and other benefits). Ongoing savings of $1.5 million is equivalent to 0.67% of total compensation.

As shown in Table 1, the agreement generates General Fund savings of $8.5 million, partially offset by a revenue loss of $328,000, resulting in net savings of $8.2 million available to be allocated to restore positions. The restoration of 70 Police Officer positions through June 30, 2011 would cost $9.2 million. A number of actions are necessary to align the budget with this recommended agreement, including appropriation ordinance and funding sources resolution adjustments in the Police Department, City Attorney's Office, Unemployment Insurance Reserve, 2011-2012 Future Deficit Reserve, revenue estimate for Transfers and Reimbursements, revenue estimate for Licenses and Permits, Cardroom Table Fee, and Airport Maintenance and Operation Fund.

**Table 1: General Fund Budget Reconciliation**

| POA Agreement General Fund Reconciliation | | |
|---|---|---|
| POA Agreement Expenditure Savings | | 8,545,073 |
| Police Department Personal Services | 8,524,141 | |
| Attorney's Office Personal Services | 20,932 | |
| | | |
| Revenue Impact | | (328,382) |
| Airport Reimb. (Transfers & Reimbursements) | (301,094) | |
| Cardroom Table Fee (Licenses & Permits) | (27,288) | |
| **Net Savings** | | **8,216,691** |
| | | |
| Restoration of 70 Police Officers | | (9,171,602) |
| Police Personal Services | (8,840,098) | |
| Police Non-Personal/Equipment | (331,504) | |
| **POA Agreement Shortfall** | | **(954,911)** |

| Other Balancing Actions | |
|---|---|
| POA Agreement Shortfall | (954,911) |
| Use of Mayor's Message Attrition Funding | 1,199,911 |
| Unemployment Insurance Reserve Savings | 985,000 |
| **2011-2012 Future Deficit Reserve** | **1,230,000** |

Of the $8,545,073 in savings, savings of $8,524,141 is generated in the Police Department and $20,932 in the Office of the City Attorney to reflect the lower police staffing costs in the department and office, respectively.

A downward adjustment of $328,382 to the revenue estimate for Transfers and Reimbursements and the revenue estimate for Licenses and Permits reflects lower sworn personal services costs. The Airport reimburses the General Fund for the cost of police services at the Airport. In addition, the Cardroom Table Fee is based on police staffing costs. Lower staffing costs require downward adjustments to revenue to bring the Airport reimbursement and Cardroom Table Fee within cost recovery levels per City Council policy.

Pursuant to the Mayor's June Budget Message, as approved by the City Council, the City Manager was directed to recalculate the value of General Fund service restorations based on concessions achieved. Restoration of 70 Police Officer positions requires funding of $9.2 million, which represents the discounted cost of this restoration with the concessions in this agreement. The final POA concession net savings of $8.2 million is insufficient to fund the restoration of these positions. This is a result of the POA agreement cost calculation being developed based on the Fiscal Year 2010-2011 Base Budget. The final savings achieved is calculated on the Adopted Budget, which includes fewer sworn police positions. Therefore, a lower amount of savings is achieved. It is therefore necessary to use a majority portion of the $1.2 million allocated for police officer attrition as approved by the City Council with the adoption of the Fiscal Year 2010-2011 Budget. This one-time funding is available and recommended to restore the remaining portion of the 70 Police Officer positions in 2010-2011. Remaining savings of $1.2 million, generated from Unemployment Insurance Reserve savings and remaining attrition funding that is no longer needed, is recommended to be allocated to establish a 2011-2012 Future Deficit Reserve as directed by City Council with approval of the Fiscal Year 2010-2011 Budget.

This agreement achieves the City Council goal to retain all 70 filled Police Officer positions to avoid layoffs this year. The agreement will generate $8.2 million in 2010-2011 savings, of which $1.5 million is ongoing. This ongoing savings is recommended to retain 8 of the 70 positions on an ongoing basis.

The City Administration has been advised by the Police & Fire Department Retirement Board's actuary, The Segal Company, that the additional retirement contributions that the employees will be making to offset the City's retirement contributions are refundable to the members upon termination of employment if the employee requests such return of contributions. The Board's actuary has calculated a refundability factor of 0.0008 for the employee contributions, meaning that of every $1 in employee unfunded liability contributions, only $0.992 is available to offset the unfunded liability after account for refunds. This actuarial loss will be factored in future valuations.

Jennifer A. Maguire
Budget Director

Alex Gurza
Director of Employee Relations

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

Attachments