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6 Attorneys for Respondent
7 CITY OF SAN JOSE

8 BEFORE THE ATTORNEY GENERAL
9 OF THE STATE OF CALIFORNIA

10 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

11 Plaintiff-Relator,

12 v.

13 CITY OF SAN JOSE, and CITY OF SAN
14 JOSE CITY COUNCIL,

15 Defendants.
16

Case No.:

EXEMPT FROM FEES (GOV. CODE §6103)

**DECLARATION OF ALEX GURZA IN
OPPOSITION TO SAN JOSE POLICE
OFFICERS' ASSOCIATION'S
APPLICATION FOR LEAVE TO SUE IN
QUO WARRANTO**

17 I Alex Gurza declare as follows,

18 1. I make this declaration of my own knowledge, and if called upon to testify, could
19 competently testify to the facts herein.

20 2. I am currently a Deputy City Manager and serve as the Director of the Office of
21 Employee Relations for the City of San Jose (hereinafter, "City"). The Office of Employee Relations is
22 responsible for, among other things, negotiating on behalf of the City with the City's bargaining units,
23 like the San Jose Police Officers' Association (hereinafter, "SJPOA").

24 3. I have been extensively involved in the City's negotiations with the SJPOA regarding a
25 successor Memorandum of Agreement ("MOA") and retirement reform, including the ballot measure
26 considered by voters at the June 5, 2012 special election.
27
28

Renewed Negotiations on Retirement Reform

1
2 12. Before the City/SJPOA Tentative Agreement ratification process was complete, the City
3 received a joint letter from the Presidents of SJPOA and the International Association of Fire Fighters,
4 Local 230 (hereinafter, "IAFF, Local 230") requesting to commence joint bargaining over "a second
5 tier of retirement benefits," the SJPOA "opt-in proposal," and "a broad discussion that can lead to a
6 mutually agreeable plan to lawfully modify benefits for existing plan participants as well." A true and
7 correct copy of this letter is attached hereto as **Exhibit B**.

8 13. On June 20, 2011, the City and the SJPOA met to begin additional negotiations on
9 retirement reform.

10 14. On the first day of negotiations, the City and the SJPOA agreed to a "framework" that
11 provided ground rules for negotiations. The parties agreed to negotiate over both the proposed ballot
12 measure and non-ballot measure retirement reforms. The parties agreed to negotiate these subjects at
13 the same table. In addition, the parties agreed to conclude negotiations by October 31, 2011, and
14 submit any remaining dispute to impasse resolution procedures at that time. The impasse resolution
15 procedures included mediation, followed by interest arbitration under San Jose City Charter Section
16 1111, if necessary. The parties specifically agreed that the proposed ballot measure would not be
17 subject to interest arbitration.

18 15. The parties met for thirteen (13) negotiation sessions on June 20, 2011, July 13, 2011,
19 August 1, 2011, August 30, 2011, August 31, 2011, September 13, 2011, September 15, 2011, October
20 4, 2011, October 12, 2011, October 14, 2011, October 20, 2011, October 24, 2011 and October 28,
21 2011.

22 16. The City first provided the SJPOA with the draft ballot measure language on July 6,
23 2011. Between July 6, 2011, and March 6, 2012, the City revised the proposed ballot measure six
24 times in response to the parties' discussions in negotiation and mediation, new information, and public
25 comments. These revised drafts were provided to SJPOA on September 9, October 5, October 20,
26 October 27, November 22, 2011 and on February 21, 2012. True and correct copies of the City's draft
27 ballot measures are attached hereto as **Exhibit C**.

28

1 17. SJPOA first provided a proposal on retirement issues on September 27, 2011. SJPOA
2 provided additional proposals on October 24 and October 31, at which time impasse occurred pursuant
3 to the parties' negotiation framework. After impasse, SJPOA chose to submit additional proposals on
4 November 11, November 18, December 1, 2011, and March 2, 2012. SJPOA did not provide a
5 proposal involving a ballot measure until March 2, 2012, after impasse occurred. True and correct
6 copies of SJPOA's proposals are attached hereto as **Exhibit D**.

7 18: On October 31, 2011, upon reaching impasse, the parties commenced mediation under
8 the terms of the ground rules. A true and correct copy of the City's October 28, 2011 letter to the
9 SJPOA regarding mediation is attached hereto as **Exhibit E**.

10 19. The parties engaged in post-impasse mediation on November 15 and 16, 2011, but were
11 unable to reach agreement.

12 20. During mediation, the City offered a number of concessions, including an improvement
13 in the opt-in benefit formula from 1.5% to 2.0%, a decrease in the minimum retirement age for
14 members of SJPOA from age 60 to age 57, and an increase in the COLA from a maximum of 1.0% to a
15 maximum of 1.5%.

16 21. Following mediation, the City incorporated these concessions into its November 22,
17 2011 draft ballot measure. The City informed SJPOA that the City Council would take up the
18 November 22, 2011 measure at its December 6, 2011 meeting.

19 22. On or about December 5, 2011, the City received a letter from one of its unions, IFPTE
20 Local 21, requesting that the City re-engage in mediation in the hope of reaching an agreement on
21 retirement reform, including the proposed ballot measure, and offering to waive any statutory right to
22 additional impasse resolution procedures. A true and correct copy of the December 5, 2011 letter from
23 IFPTE Local 21 is attached hereto as **Exhibit F**.

24 23. On December 6, 2011, several unions, including the SJPOA, made public comments at
25 the City Council meeting requesting that the City re-engage in mediation to an attempt to reach an
26 agreement. The City Council voted to once again delay the date of the election, from March 15 to June
27 5, 2012, and directed staff to invite the City's unions to a second round of mediation. A true and
28

1 correct excerpt of the San Jose City Council Synopsis from December 6, 2011 is attached hereto as
2 **Exhibit G.**

3 24. The parties met twice in late December 2011 and early January 2012 before reaching an
4 agreement to re-engage in mediation. The City proposed re-engaging the same mediator, Paul Roose,
5 Supervisor of the State Mediation and Conciliation Service (hereinafter "SMCS"). Mr. Roose is a
6 tenured professional whose services are provided by the State free of charge to the parties. Moreover,
7 Mr. Roose was already very familiar with the City's independent retirement plans and the recent
8 negotiation history between the parties. SJPOA proposed the parties pay to bring in a new mediator
9 from outside the SMCS. Although the City was concerned with changing mediators at this late stage in
10 the process and the significant cost associated with SJPOA's request, the City ultimately agreed to
11 utilize a mediator recommend by SJPOA and to share in the associated cost. The City and SJPOA
12 engaged in a second round of mediation on January 17, 18, and February 6 and 10, 2012.

13 25. Although the parties again were unable to reach agreement, the City again made several
14 concessions in mediation. Specifically, on February 10, 2012 the City proposed postponing the
15 additional retirement contributions for current employees remaining at the current level of benefits for
16 one year, delaying the phase out of certain benefit features for employees choosing to opt into a lower
17 level of benefits and improving the Tier 2, new employee benefit formula from 1.5% to 2.0%, and
18 increasing the COLA from a maximum of 1.0% to a maximum of 1.5%. SJPOA was provided the
19 opportunity to explore these changes in mediation, but ultimately the parties again were unsuccessful in
20 reaching an agreement.

21 26. On or about February 21, 2012, despite the failure to reach an agreement in mediation,
22 City staff recommended that the Council adopt the concessions that the City made during mediation.
23 City staff transmitted this revised ballot measure to SJPOA.

24 27. Although SJPOA had already rejected the February 21, 2012 version of the ballot
25 measure during mediation, in a letter dated February 24, 2012, SJPOA claimed it had not had an
26 opportunity to bargain this ballot measure.

27 28. On March 2, 2012, SJPOA provided a proposal that represented, in some respects, a step
28 backward from its previous positions, including its November 18, 2011 proposal. In particular,

1 SJPOA's March 2, 2012 proposal once again proposed a move to the CalPERS system for both current
2 employees and new hires, and included a higher maximum benefit of 90%, compared to its previous
3 proposal of 75%, for employees who opt-in to a lower tier.

4 29. On March 6, 2012, the Council approved the February 21, 2012 version of the ballot
5 measure and voted to submit the revised measure to voters on the June 5, 2012 ballot. A true and
6 correct copy of the resolution approving the ballot measure is attached hereto as **Exhibit H**.

7 30. On June 5, 2012, pursuant to direction from the City Council, the City filed a declaratory
8 relief action in the Northern District of California, case number 5:12-CV-02904-LHK, seeking a
9 judicial determination of Measure B's substantive validity.

10 31. On June 5, 2012, the San Jose electorate approved Measure B by a margin of 69.5% to
11 30.5%.

12 32. The projected retirement costs utilized during and throughout the negotiation and
13 mediation process with the SJPOA were the most up to date information at that time provided by the
14 Retirement Board's independent actuary, Cheiron, dated July 20, 2011. At no time did the City's
15 bargaining team ever refer to or use \$650 million as a projected future retirement cost. A true and
16 correct copy of the July 20, 2011 Cheiron report is attached hereto as **Exhibit I**.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed on July 5, 2012, at San Jose, California.

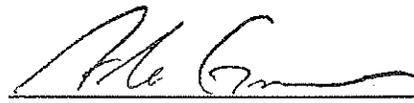
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23 _____
24 ALEX GURZA
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EXHIBIT A



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 24, 2011

The Council of the City of San José convened in Regular Session at 9:04 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Liccardo, Nguyen.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Director of Employee Relations Alex Gurza offered the Labor Negotiations Update.

Public Comments: Brian Doyle (ALP) and Jon Max Regger (OE-3) expressed a lack of communication on the part of the City's bargaining team.

CLOSED SESSION

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

Upon motion unanimously adopted, Council recessed at 9:11 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Alvis v. City, et al.; Names of Parties Involved: Jennifer M. Alvis, Derek Alvis, David N. Olmos, City of San José, Does 1 to 50; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV140422; Amount of Money or Other Relief Sought: Damages according to proof;

- 2.13 (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in 2010-2011 in the Construction Excise Tax Fund:
- (1) Increase the appropriation to the Department of Transportation for the Capitol Expressway Light Rail Pedestrian Improvements project by \$50,000.
 - (2) Increase the estimate for Earned Revenue by \$50,000.

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. Council Districts: 5 & 8. SNI Areas: Five Wounds/Brookwood Terrace, Gateway East, Mayfair, East Valley/680 Communities. (Public Works/City Manager's Office)

Action: Deferred to June 7, 2011 per Administration.

- 2.14 As recommended by the Rules and Open Government Committee on May 18, 2011, adopt a position of support for AB 1167 (Fong) – Interagency Council on Homelessness. (Housing)
[Rules Committee referral 5/18/11 – Item D(1)(c)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated May 18, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support was adopted for AB 1167 (Fong) – Interagency Council on Homelessness. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.4 Accept the City Manager's Fiscal Reform Plan and direct staff to proceed with the steps necessary to implement the plan, including meeting and conferring with the bargaining units, as applicable. (Mayor)
[Rules Committee referral 5/11/11 – Item E(1)]

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Liccardo, dated May 13, 2011, outlining proposals for fiscal reforms. (2) Memorandum from Mayor Reed, dated May 24, 2011, forwarding a Law Journal article "Declaration of Fiscal Emergency". (3) Fiscal Reform Plan from City Manager Debra Figone, dated May 2, 2011. (4) Memorandum from Council Member Rocha, dated May 20, 2011, recommending proposals to address retirement reform. (5) Memorandum from Council Member Pyle, dated May 23, 2011, recommending proposals regarding the City Manager's Fiscal Reform Plan. (6) Powerpoint presentation regarding Tier 2 "Opt-in DB Plan for Current Employees" provided by Council Member Constant, May 24, 2011. (7) Letter from Assembly Member Paul Fong, dated May 20, 2011, regarding Investigation into City of San José Fiscal Emergency Declaration. (8) City of Stockton News Release "Stockton Retiree Healthcare to Benefit from Federal Reimbursement". (9) Letter from Evet S. Loewen, dated May 20, 2011, offering comments on retirement reform. (10) Letter from Joan R. Gallo, dated May 24, 2011, raising concerns around the City's fiscal reform proposals.

3.4 (Cont'd.)

Mayor Reed provided an overview, and City Manager Debra Figone presented the proposed Fiscal Reform Plan, outlining recommendations to achieve \$216 million in General Fund savings by Fiscal Year 2015-2016.

Mayor Reed outlined recommendations as presented in the memorandum he cosigned with Vice Mayor Nguyen and Council Members Herrera and Liccardo.

Council Member Constant proposed an opt-in plan for current employees, which he outlined for Council's consideration.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, recommendations as outlined by the City Manager, with consideration of the recommendations provided by Council Member Constant, including continued discussions with bargaining units, with Staff to return with recommendations on June 21, 2011. The motion was seconded by Council Member Herrera.

Council Member Rocha requested to amend the motion to include his memorandum of May 20, 2011. Council Members Liccardo and Herrera accepted the amendment.

Director of Employee Relations Alex Gurza and City Attorney Rick Doyle provided clarification and responded to questions from Council.

Public Comments: Sixty-six members of the public provided input on recommendations put forth on the fiscal reform plan and collective bargaining issues.

Extensive Council discussion continued.

Council Member Campos offered support of Council Member Rocha's memorandum, but declined support of points set forward in the other memoranda under consideration. He deemed it irresponsible to declare a fiscal emergency at this time.

Council Member Chu reiterated supporting an increased retirement age, but pointed out the volume of information being presented is setting Staff up for an impossible mission.

Council Member Kalra warned of potential legal risks involved in going forward with the recommendations being considered.

Council Member Herrera requested to amend the motion to include increasing revenue as outlined in Council Member Pyle's memorandum of May 23, 2011. Council Member Liccardo accepted the amendment.

3.4 (Cont'd.)

Action: On a call for the question, the motion carried, the City Manager's memorandum with the inclusion of the following Council memorandums as guidelines for Staff's analysis and direction to report back on June 21 were approved, including:

- (a) Memorandum cosigned by Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo dated May 13, 2011 as modified to include:
 - i) To make temporary, if possible, Recommendation B, the limitations on retirement benefits and requirement of voter approval of increases in retirement benefits, ii) direct staff to determine how to allocate any savings in the cost of the pension plans to the pension portion of the City's fiscal problems, and iii) the concept of a "middle tier" for opt-in by existing employees;
- (b) Memorandum from Council Member Rocha, dated May 20, 2011;
- (c) Memorandum from Council Member Pyle, dated May 23, 2011; and
- (d) Slide presented by Council Member Constant "Tier 2 Opt-in DB Plan for Current Employees - to be Designed with Parameters", as follows: "(1) Total City contribution not to exceed 50% of current normal cost; (2) Increased retirement age; (3) Reduced CPI, with cap; (4) Actuarial evaluations to be based on an assumed rate of return that has a 50% probability of occurrence as outlined in previous presentations by Retirement Services (6.75%); (5) Elimination of SRBR; (6) other modifications as needed.
- (e) Staff to return to Council on June 21 with a full cost analysis for the proposals by the Mayor, Council Member Rocha and Council Member Constant both as percentage of employee compensation as well as an estimate of the aggregate dollar value, both as a mandatory set of benefits imposed on current employees and evaluated as an opt-in tier; that staff should apply some sensitivity analysis around assumptions of the percentage of employees that may opt-in and the likely demographics, particularly the ages of those employees; and apply the same 6.75% investment return assumption, the return which the retirement plans have a 50/50 probability of achieving.
- (f) Continue discussions with bargaining units regarding various options for reform and explore opportunities to achieve points of agreement.
- (g) Defer the declaration of a fiscal emergency until Staff returns to Council on June 21, 2011 with draft language relating to that declaration.
(8-3. Noes: Campos, Chu, Kalra.)

3.3 Adopt a resolution authorizing the City Manager to execute:

- (a) An amendment to the existing Second Amended and Restated Agreement with San Jose Convention & Visitors Bureau until June 30, 2011, with a compensation for the extension period in an amount not to exceed \$1,100,000; and

EXHIBIT B



425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718
(408) 286-2577 fax

SAN JOSE

FIRE FIGHTERS & POLICE OFFICERS



June 9, 2011



1151 N. Fourth Street
San Jose, CA 95112
(408) 298-1133
(408) 298-3151

Alex Gurza
Director of Employee Relations
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

RE: Request to Commence Joint Bargaining Over Retirement Benefits

Dear Alex:

This letter is a request by the San Jose Police Officers' Association and by IAFF, Local 230 to the City of San Jose for an agreement to commence joint bargaining over a second tier of benefits for the Police and Fire Retirement Plan. The SJPOA also wishes to discuss its opt-in proposal, pursuant to its recent side letter with the City (presuming ratification by both parties).

It is anticipated that successful bargaining would result in separate agreements between the City and each labor organization over a second tier. And consistent with recent direction from the City Council, both unions anticipate a broad discussion that can lead to a mutually agreeable plan to lawfully modify benefits for existing plan participants as well.

Please contact each of the undersigned to set an agreeable date and time to discuss this request.

Very truly yours,

GEORGE BEATTIE, President
San Jose Police Officers' Association

Very truly yours,

ROBERT SAPIEN, JR., President
San Jose Fire Fighters, IAFF Local 230

EXHIBIT C

SENT VIA EMAIL

February 21, 2012

Jim Unland
President
San Jose Police Officers' Association
1151 North Fourth Street
San Jose, CA 95112

RE: Proposed Ballot Measure

Dear Jim:

As you know, on December 6, 2011, the City Council approved placing a measure on the ballot for the June 2012 election that included various proposed changes to the City Charter regarding retirement benefits. In addition, the City Council requested that the City's negotiation team re-engage in mediation with all bargaining groups regarding all retirement issues, including the related ballot measure, in an effort to see if an agreement could be reached that could have resulted in revisions. The City and the San Jose Police Officers' Association re-engaged in mediation but, unfortunately, we did not reach an agreement on the ballot measure or on the other retirement-related issues discussed during mediation.

As we have indicated, the City Council needs to submit the ballot measure to the County Registrar of Voters 88 days prior the June election, which would be March 9, 2012. In order to provide time for the ratification process and for publication of a Council memorandum, we had hoped to reach an agreement by today.

Although we did not reach an agreement that would revise the ballot measure approved by the City Council on December 6, 2011, enclosed please find a revised proposed ballot measure that will be considered by the City Council at the March 6, 2012, Council Meeting for a June 2012 ballot. This version of the ballot measure contains the

San Jose Police Officers' Association
RE: Proposed Ballot Measure
February 21, 2012
Page 2 of 2

changes we proposed in mediation and is identical to the draft we provided you on February 10, 2012.

Sincerely,



Alex Gurza
Deputy City Manager

c: Gina Donnelly, Deputy Director of Employee Relations
Gregg McLean Adam, Carroll, Burdick & McDonough LLP

Enclosure



COUNCIL AGENDA: 03-06-12
ITEM:

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

SUBJECT: REVISED BALLOT
MEASURE

FROM: Debra Figone

DATE: February 21, 2012

RECOMMENDATION

1. Discussion and consideration of repeal of Resolution No. 76087 and consideration of a revised Retirement Reform ballot measure for a June 5, 2012 election;
2. If Council wishes to proceed, repeal Resolution No. 76087 and adopt a resolution of the Council:
 - a) calling for a special municipal election to be held on June 5, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San Jose, of the following measure at that election:

PENSION REFORM

To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions; establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees; reforming disability retirements to prevent abuses; temporarily suspending retiree COLAs during emergency; and requiring voter approval for increases in future pension benefits?

- b) directing the City Clerk to take all other actions previously approved on December 6, 2011, necessary to facilitate the Special Municipal Election.

BACKGROUND

The Mayor's March 2011 Budget Message, that was approved by the City Council, directed the City Manager to develop a Fiscal Reform Plan to save \$216 million in General Fund Savings by Fiscal Year 2015-2016, and to reduce retirement costs to the Fiscal Year 2010-2011 level. The Fiscal Reform Plan is available here:

<http://www.sanjoseca.gov/budget/FY1112/05MBA/MBA01-FiscalReformPlan.PDF>.

HONORABLE MAYOR AND CITY COUNCIL

Subject: Revised Ballot Measure

February 21, 2012

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At the May 24, 2011, City Council meeting, the City Manager's *Fiscal Reform Plan* was agendaized for discussion as item 3.4. For this agenda item, in a memorandum dated May 13, 2011, Mayor Reed, Vice Mayor Nguyen and Councilmembers Herrera and Liccardo, recommended an amendment to the City Charter in order to limit retirement benefits and to require voter approval of increases in retirement benefits. This was approved by the City Council, which directed staff to return with a proposed ballot measure.

To allow time to meet and confer with the City's bargaining units, this item was deferred and, per a memo submitted by the Mayor on November 18, 2011, consideration of the proposed ballot measure was agendaized for City Council consideration at the Council meeting on December 6, 2011. On December 6, 2011, the City Council adopted Resolution 76087 and approved a ballot measure (Attachment B) for the June 2012, election, but directed staff not to submit the ballot measure language to the Registrar of Voters to allow time for the City Administration to ask the bargaining units to re-engage in mediation on all retirement issues, including the related ballot measure, in an attempt to reach an agreement on the ballot measure language that would be submitted to the Registrar of Voters.

Timeline

When the direction for a ballot measure was first approved in May 2011, it was intended for consideration for the November 2011 election. However, to give additional time for negotiations with the City's bargaining units, it was postponed until the March 2012 election. On December 6, 2011, the City Council voted again to delay the ballot measure to the June 2012 election.

The City Council must approve putting a ballot measure before the voters 88 days in advance of the election. March 9, 2012, is 88 days prior to the June 2012 election. Although the City Council approved ballot measure language on December 6, 2011, the language was not submitted to the Registrar of Voters to allow additional time for mediation. The final ballot measure language must be submitted to the Registrar of Voters by March 9, 2012.

If the revised ballot measure is not approved by the City Council, absent other action by the City Council, the City Clerk has been directed to submit to the Registrar of Voters the ballot measure approved by the City Council on December 6, 2011.

ANALYSIS

Meet and Confer with the City's Bargaining Units

As was explained in a memo (Attachment C) dated November 22, 2011, for the December 6, 2011 meeting, the meet and confer process over a ballot measure is somewhat different than the traditional meet and confer process and is referred to as "Seal Beach Bargaining." "Seal Beach Bargaining" is a labor term that comes from a court case involving the City of Seal Beach, California, and the Seal Beach Police Officers' Association. It refers to bargaining or negotiating over a proposed ballot measure prior to it being placed on a ballot for consideration by voters during an election. This is only done when a proposed ballot measure affects matters within the scope of representation.

HONORABLE MAYOR AND CITY COUNCIL

Subject: Revised Ballot Measure

February 21, 2012

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Because the proposed ballot measure affects retirement benefits, the City engaged in "*Seal Beach Bargaining*" with all 11 of its bargaining units, although the level of participation varied by each bargaining unit. In all cases, the City provided advance notice to every bargaining unit and an opportunity to bargain.

Although significant changes were made to the ballot measure based on comments the City received from the bargaining units, no agreement was reached with any bargaining unit during negotiations. Because of this, impasse procedures were invoked. Under the Employer-Employee Relations Resolution 39367, mediation is triggered by a declaration of impasse. The City offered mediation to all bargaining units, even those who had declined or failed to participate in bargaining regarding the ballot measure.

Prior to December 6, 2011, the City and 11 bargaining units engaged in mediation, but those efforts did not result in an agreement. Although the City Council approved moving forward with the ballot measure dated December 5, 2011, for a June 2012 election, they asked that the City negotiators ask the bargaining units to re-engage in mediation in an attempt to reach an agreement.

On December 7, 2011, the City Administration contacted all 11 bargaining units to gauge their interest in re-engaging in mediation in a coalition setting. Although the City asked that the 9 bargaining units that represented employees in the Federated City Employees' Retirement System meet in a coalition setting, they were not interested in doing so.

The following chart represents the coalitions that were formed for mediation and the numerous mediation sessions and meetings that ensued since December 6, 2011.

Federated City Employees' Retirement System		Police and Fire Department Retirement System
Association of Building, Mechanical and Electrical Inspectors Association of Legal Professionals Confidential Employees' Organization, AFSCME Municipal Employees' Federation, AFSCME Operating Engineers, Local #3	<u>IFPTE Local 21</u> Association of Engineers and Architects City Association of Management Personnel Association of Maintenance Supervisory Personnel	San Jose Fire Fighters, IAFF Local 230 San Jose Police Officers' Association
Wednesday, December 21st Wednesday, January 4th Friday, January 6th Friday, January 13th Monday, January 30th Monday, February 13th	Friday, January 6th Monday, January 9th Thursday, January 19th Tuesday, January 24th Thursday, January 26th Wednesday, February 8th Thursday, February 9th	Thursday, December 22nd Monday, January 9th Thursday, January 12th Tuesday, January 17th Wednesday, January 18th Monday, February 6th Friday, February 10th

The mediation process itself is confidential. If an agreement is not reached in mediation, the City may maintain its position prior to mediation, which was the approved December 5, 2011, ballot measure, or it may make additional movement consistent with its positions in mediation. In other words, even without an agreement, the mediation process may result in additional changes to the ballot measure.

Despite a total of approximately 20 meetings, an agreement was not reached with any of the bargaining units.

Ballot Measure

During the last 7 months, the City made numerous and significant changes to the ballot measure and provided the following revised drafts to the bargaining units:

- July 5, 2011 (Original Draft Proposed Ballot Measure)
- September 9, 2011
- October 5, 2011
- October 20, 2011
- October 27, 2011
- December 5, 2011

Although mediation did not yield an agreement with any of the bargaining units, I am recommending additional changes to the ballot measure from the December 5, 2011, version which was approved by the City Council on December 6, 2011. The attached (Attachment A) reflects all of the recommended changes to the previous version of the ballot measure. These changes are a combination of clarifying language and substantive changes after mediation discussions. It is important to note that through the negotiation process, 10 of the City's 11 bargaining units at one time during the process proposed an opt-in program, which is also referred to as a voluntary election program.

The following highlights some of the recommended changes to the ballot measure since the December 5, 2011, version that was approved by the City Council. It is important to read the attached revised ballot measure which clearly identifies all of the proposed changes.

Vesting Language (Sections 2 and 5)

The revised ballot measure includes clarifications to the language regarding the City's ability to modify benefits in the future in Sections 2 and Section 5 to be consistent with the provisions in the City Charter.

Current Employees (Section 6)

The revised ballot measure includes the following changes to the compensation adjustment through additional retirement contributions for those employees who elect to stay in the current level of benefits (Tier 1).

Provision	December 5, 2011 Ballot Measure	Recommended Revision
Compensation Adjustment Increments per Fiscal Year	5% of pensionable pay	4% of pensionable pay
Compensation Adjustment Maximum	25%, but no more than 50% of the unfunded liability	16%, but no more than 50% of the unfunded liability
Compensation Adjustment Start Date	June 24, 2012	June 23, 2013

The compensation adjustments through additional retirement contributions will be in increments of 4%, with a maximum of 16% of pensionable pay. The unfunded liability serves as a limitation on the compensation adjustment employees would receive through additional retirement contributions. The adjustments are not required to be exactly in increments of 4% because they are dependent on the limitation of 50% of the pension unfunded liability.

Below is an example using the pension unfunded liability contribution rate for Fiscal Year 2012-2013 for an employee in the Federated City Employees' Retirement System. It should be noted that this is only an example and the unfunded liability contribution rate is adjusted every year based on an actuarial valuation completed by the Board's actuary. The pension unfunded

liability contribution rate for Fiscal Year 2012-2013 (which is currently 100% City paid) will be 26.37%. 50% of this contribution rate is 13.185%.

The revised ballot measure reduces the cap on the compensation adjustment through additional retirement contributions to 16% of pensionable pay, but no more than 50% of the unfunded liability to be adjusted in 4% increments rather than 5%. The chart below provides an example of the compensation adjustment for future years if the pension unfunded liability contribution rate remained at 26.37% for an employee who elects to stay in the current level of retirement benefits.¹

Fiscal Year	Example Compensation Adjustment Increment	Example Total Compensation Adjustment
Fiscal Year 2013-2014	4%	4%
Fiscal Year 2014-2015	4%	8%
Fiscal Year 2015-2016	4%	12%
Fiscal Year 2016-2017	1.185%	13.185%

In any year where the pension unfunded liability contribution rate decreases, the decrease could occur in more or less than 4% increments. For example, after the phase in example above, if the pension unfunded liability contribution rate decreased to 15% (50% of that is 7.5%), an employee's compensation adjustment through additional retirement contributions would decrease to 7.5% for that year.

If the Voluntary Election Program is not implemented for any reason, the compensation adjustment will apply to all employees. When the Voluntary Election Program is implemented, the only employees who will not have the compensation adjustment are those that opt into the Voluntary Election Program defined in the ballot measure.

Voluntary Election Program (Section 7)

In the current level of benefits (Tier 1), an employee can retire at any age after reaching 30 years of service. If an employee elects to opt into the Voluntary Election Program (VEP), in the December 5, 2011 ballot measure, the eligibility to retire at thirty (30) years of service regardless of age would increase by 6 months annually on July 1 of each year. This phase in would start the first July 1 after the Voluntary Election Program was implemented. In the revised ballot measure, this phase in would not start until July 1, 2017.

¹ These numbers are only an example, the actual unfunded liability for each Fiscal Year will be determined by the Boards' actuary.

Future Employees- Limitation on Retirement Benefits- Tier 2 (Section 8)

The ballot measure itself does not define what the retirement benefit will be for new employees, rather, it sets parameters around the Tier 2 benefit. The revised ballot measure increases those parameters as follows:

Benefit Parameter	December 5, 2011 Ballot Measure	Recommended Revision
Cost of Living Increase Maximum	1% maximum based on the Consumer Price Index (CPI)	1.5% maximum based on CPI
Benefit Accrual Rate Maximum	1.5% per year of service	2% per year of service with a 65% maximum

In addition, the December 5, 2011, ballot measure states that all costs for the Tier 2 plan be shared 50/50 between the City and employees, but that the City contributions would not be less than 6.2% nor greater than 9% of base salary.

In the revised ballot measure, the City's cap on costs of 9% would be removed for a defined benefit plan and regardless of the costs of the defined benefit plan, they would be shared 50/50 between employees and the City. Below is a comparison of this cost sharing arrangement:

Benefit Parameter	December 5, 2011 Ballot Measure	Recommended Revision
Defined Benefit Plan with a Total Cost of 20% of payroll	City Cost: 9% Employee Cost: 11%	City Cost: 10% Employee Cost: 10%

However, the revised ballot measure adds that the City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9% and that if the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan. For example, if the City's share of the costs for a defined benefit plan is 10%, no contributions would be allowed into a defined contribution plan. If the City's share of the costs for a defined benefit plan is 8%, the City could, but is not required to, contribute up to 1% (for a total of 9%) towards a defined contribution plan for the employee.

It is important to note that because the ballot measure only sets parameters for a second tier, the actual design of the second tier is subject to the negotiations process with the bargaining units. The City and the bargaining units have also reached impasse on this topic and engaged in mediation, which did not result in an agreement.

Savings (Section 14)

This section was modified to limit the application of the section to the situation in which it is determined that the City is not able to adjust compensation through additional retirement contributions, then the City would, to the extent permitted by law, adjust compensation through pay reductions.

The ballot measure will also include section numbering to be consistent with the City Charter.

CONCLUSION

The proposed ballot measure includes many significant changes and movement from earlier drafts. This movement is the result of many hours of negotiations and mediation with the City's bargaining units and consideration of the many dimensions of the difficult issue of Retirement Reform.

The proposed revised ballot measure is a critical step towards reducing retirement costs "in a manner that protects the City's viability and public safety" and "at the same time allowing for the continuation of fair post-employment benefits for its workers," as stated in the attached Retirement Reform Ballot Measure.

COORDINATION

This memo has been coordinated with the City Attorney's Office.



DEBRA FIGONE
City Manager

Attachments:

- A: February 21, 2012, Revised Ballot Measure
- B: December 5, 2011, Ballot Measure Approved by the City Council on December 6, 2011
- C: November 22, 2011, Council Memorandum (without attachments)



February 21, 2012

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*The Employee Fair Pay and Sustainable Retirement Benefits and Compensation Act.*"

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

~~This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503. ; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.~~

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Section 3. ~~Measure~~ Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ~~as well as all ordinances, resolutions or other enactments.~~

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than ~~June~~ September 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have ~~no~~ authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this ~~measure~~ Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees ~~to amend, change or repeal any retirement or other~~

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~~post-employment benefit program subject to the terms of this measure~~Act.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation ~~reduced~~adjusted by sharing through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

~~(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.~~

~~(d)~~ The starting date for an employee's compensation adjustment under this Section shall be June ~~24~~23, 2012~~2013~~, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the

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compensation adjustments shall apply to all Current Employees.

(ed) The compensation adjustment through additional employee contributions for Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(fe) The additional retirement contributions compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably

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relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service

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retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017 ~~on July 1 of each year.~~
 - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
 - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt

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into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and

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maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) ~~The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the~~

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City may, but shall not be required to, contribute the difference to a defined contribution plan.

- (b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.
- (d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.
- (e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.52% per year of service, not to exceed 65% of final compensation.
- (f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours

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of regular time worked (including paid leave, but not including overtime).

- (g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.
- (h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 9: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

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(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an

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offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees

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in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans

February 21, 2012

must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- 1) the funding objectives and actuarial assumptions of the plans; and

February 21, 2012

- 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

~~(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.~~

~~(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed ~~54%~~ 54% of compensation each year, capped at a maximum of ~~2516%~~ 2516% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.~~

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this

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amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

SENT VIA EMAIL

November 22, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Revised Ballot Measure

Dear George and Robert:

The City and the POA and the San Jose Fire Fighters, Local 230 participated in mediation on November 15th and 16th, regarding retirement reform, including but not limited to, the proposed ballot measure. Unfortunately, the parties were unable to reach an agreement.

Please find enclosed a revised ballot measure that has been transmitted to the City Council. The revised ballot measure will be considered by the City Council during the December 6, 2011, City Council meeting for a March 2012 election.

Sincerely,



Alex Gurza
Deputy City Manager

c: Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

Enclosure

November 22, 2011

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay and Sustainable Benefits Act."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase dramatically in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a service level emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions

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and legal restrictions severely limit revenue growth, there is no reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

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The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post

November 22, 2011

employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than June 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. The City Council shall have no authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and to amend, change or repeal any

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retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation reduced by sharing 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan

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and employees in the Federated City Employees' Retirement System.

(f) The additional retirement contributions shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%)

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earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

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- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year.
 - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
 - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

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(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for

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a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.
- (b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City

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Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.
- (d) For any defined benefit plan, “final compensation” shall mean the average annual pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.
- (e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.
- (f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

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- (h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 9: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

- (i) An employee cannot do work that they did before; and

- (ii) It is determined that

- 1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

- 2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's

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department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

The City shall adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees from July 1, 2012 until at least January 1, 2018.

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After January 1, 2018, the City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1% for employees in Tier 2.

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active

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employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

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- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- 1) the funding objectives and actuarial assumptions of the plans; and
 - 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

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(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

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(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

SENT VIA EMAIL

October 27, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Revised Draft Proposed Ballot Measure

Dear George and Robert:

On July 6, 2011, the City provided the POA and the San Jose Fire Fighters, IAFF, Local 230 a copy of the draft proposed ballot measure that incorporates the relevant elements from the May 13th memo and City Manager's Fiscal Reform Plan, as approved by the City Council. Subsequently, the City Council provided additional direction and revised draft proposed ballot measures were provided on September 9th, October 5th and October 20th. Since then, the City Council has provided further direction regarding the draft proposed ballot measure. Enclosed please find a revised draft proposed ballot measure.

As you know, recent drafts of the proposed ballot measure include increased employee retirement contributions for employees who do not opt into the VEP but remain in the current level of benefits. Some bargaining units have expressed concerns that increasing employee contributions to pay for retirement benefits is not permissible. While the City maintains its position that increasing retirement contributions for current employees is permissible, Section 15 has been amended to clarify this provision. In summary, Section 15 now states that in the event that any increase in the employee's share of the cost to amortize the unfunded liabilities for pension benefits cannot be implemented, the equivalent cost savings will be achieved through compensation reductions.

The City and the San Jose Fire Fighters, IAFF, Local 230 have reached an agreement to negotiate concurrently on the issues of retirement reform and related ballot measure(s). In light of the approaching deadlines regarding the ballot measure, we request that the currently scheduled session on October 28th be designated to discussion of the proposed ballot measure.

If you have any questions or concerns regarding this information, please do not hesitate to contact me.

Sincerely,



Alex Gurza
Deputy City Manager

- c: Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

Enclosure

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay Act for Fiscal Sustainability."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to increase dramatically in the near future. In addition, the City's accrued unfunded liability for other post employment benefits – primarily health benefits – is similarly increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a public service emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no

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reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected levels of services are unsustainable, and endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that its pension and post employment benefit plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI, §5.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date, rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree, including any cost of living increases received by retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits. The City Council shall have no authority to agree to any increase in pension and/or retiree healthcare benefits, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to ensure the preservation of the tax status of the plan, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (~~section~~ Section 8).

(b) ~~Unless they opt into a lower cost plan as provided in the Voluntary Election Program ("VEP," described herein),~~ All Current Employees who fail to opt in to the Voluntary Election

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Program ("VEP," described herein) will share 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% annually until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The City Council shall adopt by ordinance the procedure and formulae necessary to implement this Section.

Section 7: One Time Voluntary Election Program ("VEP")

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a Voluntary Election Program ("VEP") for all Current

Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) where they acknowledge that they irrevocably relinquish their existing level of retirement benefits and have voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits under the VEP shall be based on the following limitations:

~~(i)~~ (i) — the accrual rate shall be 1.5% of "final compensation", hereinafter defined, per year of service for future years of service only.

~~(ii)~~ (ii) the maximum benefit shall remain the same as the maximum benefit for Current Employees.

(iii) the current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 60 for employees in the Police and Fire Department Retirement Plan and the age of 65 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees' Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

~~(iii)~~(iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually.

(iv) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

- (vi) — “final compensation” shall mean the average salary of the three highest consecutive years preceding the date of retirement.

- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan related to past service.

- (d) For employees who opt into the VEP, survivorship benefits shall be the same as the survivorship benefits in Tier 2 (benefits for new employees, ~~as described in Section 8.~~).

- (e) VEP Disability Retirement Benefits:
 - (i) A service connected “disability” retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 45% of annual pensionable pay based on the average of the highest three consecutive years of service.

 - (ii) A non-service connected disability retirement benefit shall be as follows:
 - a. The employee or former employee shall receive 1.5% times years of City Service (minimum 20% and maximum of 37.5%) of annual pensionable pay based on the average of the highest three

consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees - Limitation on Retirement Benefits - Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program - for new employees - shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of pensionable salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the

actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees' Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, the measuring period for determining "final compensation" shall be the average salary of the three highest consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System and at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(g) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 9: Disability Retirements

To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

- (a) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:
 - (i) An employee cannot do work that they did before; **and**
 - (ii) It is determined that the employee cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); **and**
 - (iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.
- (b) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

(a) The City Manager shall propose, and the City Council shall adopt by ordinance, the following, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(i) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees until January 2017;

After January 2017, the City Council may restore COLAs prospectively (in whole or in part), based upon the following considerations: (a) whether the fiscal emergency has eased sufficiently to ensure that the City can provide services protecting the health and well-being of City residents; (b) whether the criterion set forth Section 14 (b) (ii) has been met for the three year period beginning January 2017 or thereafter; and (c) whether retirees are continuing to receive a substantial and fair pension.

(ii) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1% for Current Employees who opted into the VEP and employees in Tier 2.

Section 11: Supplemental Payments to Retirees

Any supplemental payments to retirees in addition to those authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:
 - 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
 - 1) the funding objectives and actuarial assumptions of the plans; and

- 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that any of the following conditions arise as determined in the reasonable discretion of the City Manager:

- (Condition 1) Essential City Services are not provided at or above the service levels of January 1, 2011; (Condition 2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011, is not operational due to a budget/lack of funds; or (Condition 3 ~~(limited as described herein)~~) any of the City's pension or retiree healthcare plans have unfunded liabilities calculated on a market value or actuarial value greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official or binding act that allows or requires the City to do any of the following, without prior approval by the voters: (i) pay for unused sick leave time (ii) pay for accrued and unused vacation time, except at separation of City service as may be required by applicable state or federal law; (iii) grant retroactive increase-compensation increases to ~~for~~ members of bargaining units after an applicable memorandum of agreement has contracts expired prior to the date ~~until~~ a new contract is in effect; (iv) give automatic step increases or other raises for time in the job that are not based on performance;

(v) use hours not actually worked in determining eligibility for overtime; (vi) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vii) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (viii) pay workers' compensation benefits beyond what state or federal laws require; (ix) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (x) calculate retirement benefits on any compensation other than actual base salary paid, or years-pensionable regular hours (not including overtime) and paid leave (up to 2080 hours)-actually worked for the City of San Jose, except as required by applicable state law; (xi) make layoff or rehiring decisions without considering individual employee performance; (xii) pay for more than 50% of the increase in the cost of healthcare benefits. ~~Nothing in this section shall be construed to mandate a particular level of service or method of service delivery.~~

Nothing in this Act shall be construed to mandate a particular level of service or method of service delivery nor to interfere with or limit the City from adopting more efficient or less costly means of delivering services.

For the purposes of this Act, unfunded liabilities for employees covered under the Federated City Employee's Retirement System and the Police and Fire Department Retirement Plan shall be treated separately. Thus, if Condition (3) arises, the consequences as specified in this Act shall apply only to those employees in the plan that has the unfunded liabilities.

Accordingly, -if there is an unfunded liability in only the Federated plan the safety net provisions shall apply to employees in the Federated plan, and not those in the Police and Fire plan. Similarly, if there is an unfunded liability in only the Police and Fire plan, the safety net provisions shall apply only to employees in the Police and Fire plan.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

- (i) At any time City pension or retiree healthcare plans have unfunded liabilities based on market value or actuarial value for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, or supplemental pension payments to retirees shall not be allowed, except upon prior approval of the voters.
- (ii) The limitations shall be temporary and shall remain in effect until the unfunded liabilities based on market value or actuarial value have remained below the level of June 30, 2010 for three consecutive years.

Section 15: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable

by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event Section ~~6,7~~ or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(c) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 15(b), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

(~~d~~e) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

October 20, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Revised Draft Proposed Ballot Measure

Dear George and Robert:

On July 6, 2011, the City provided POA and IAFF, Local 230 a copy of the draft proposed ballot measure that incorporates the relevant elements from the May 13th memo and the City Manager's Fiscal Reform Plan, as approved by the City Council. Subsequently, in part based upon additional feedback and questions received by several bargaining units, the City Council provided additional direction and revised draft proposed ballot measures were provided to the POA and IAFF, Local 230 on September 9th and October 5th. Since then, the City Council has provided further direction regarding the draft proposed ballot measure. Enclosed please find a revised draft proposed ballot measure.

The enclosed revised draft proposed ballot measure includes several revisions. The most significant changes are related to the Cost Of Living Adjustment (COLA). Previously, the ballot measure included a permanent reduction to the COLA from 3% to 1% for all current and future retirees. In addition, the COLA was to be temporarily suspended. In the enclosed draft proposed ballot measure, the COLA would still be temporarily suspended. However, the City Council would have the ability to restore COLA's prospectively, up to 3% annually for current retirees and future retirees remaining in the current benefit level, and up to 1% for

employees that elect to enroll in the Voluntary Election Program (VEP), as well as New Employees.

As you know, the City and the POA and IAFF, Local 230 have reached an agreement to negotiate concurrently on the issues of retirement reform and related ballot measure(s). We are currently scheduled to negotiate on these matters on October 20th and the City continues to be open to designating a portion of the meetings to discuss the revised draft proposed ballot measure. As we previously communicated, the City is available to have additional sessions to discuss all retirement proposals prior to October 31, 2011.

The City expressly reserves the right to propose other charter amendments pertaining to retirement issues, or to make changes to the attached draft ballot measure.

If you have any questions or concerns regarding this information, please do not hesitate to contact me.

Sincerely,



Alex Gurza
Director of Employee Relations

c: Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

Enclosure

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *“The Employee Fair Pay Act for Fiscal Sustainability.”*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter “Essential City Services”).

The City’s ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City’s retirement plans is expected to increase dramatically in the near future. In addition, the City’s accrued unfunded liability for other post employment benefits – primarily health benefits – is similarly increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a public service emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no

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reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected levels of services are unsustainable, and endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that its pension and post employment benefit plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI, §5.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree, including any cost of living increases received by retirees, as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

Section 43. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits. The City Council shall have no authority to agree to any increase in pension and/or retiree healthcare benefits, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 54. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to ensure the preservation of the tax status of the plan, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 65. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (section 78).

(b) Unless they opt into a lower cost plan as provided in the Voluntary Election Program ("VEP," described herein), all Current Employees will share 50% of the costs to amortize any

pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% annually until the employee's proportionate share of the cost reaches 50% of the pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The City Council shall adopt by ordinance the procedure and formulae necessary to implement this Section.

**Section 76: One Time Voluntary Election Program
("VEP")**

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The

implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall ~~be designed to permit Current Employees~~ a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if applicable legally required) where they acknowledge that they have irrevocably relinquish given up their existing level of retirement benefits and have voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

- (a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.
- (b) On and after the effective date of the ordinance, pension benefits under the VEP shall be based on the following limitations:
 - (i) the accrual rate shall be 1.5% of "final compensation", hereinafter defined, per year of service for future years of service only.
 - (ii) the current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years

of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 60 for employees in the Police and Fire Department Retirement Plan and the age of 65 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees' Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

- (iii) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually.
 - (iv) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (v) “final compensation” shall mean the average salary of the three highest consecutive years preceding the date of retirement.
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt

into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan related to past service.

(d) For employees who opt into the VEP, survivorship benefits shall be the same as the survivorship benefits in Tier 2 (benefits for new employees, as described in Section 87).

(e) VEP Disability Retirement Benefits.

(i) A service connected "disability" retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 45% of annual pensionable pay based on the average of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

a. The employee or former employee shall receive 1.5% times years of City Service (minimum 20% and maximum of 37.5%) of annual pensionable pay based on the average of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 87: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – shall may be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of pensionable salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees’ Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor

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Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, the measuring period for determining "final compensation" shall be the average salary of the three highest consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System and at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(g) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 98: Disability Retirements

To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made

regardless of whether there are other positions available at the time a determination is made.

- (a) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:
 - (i) An employee cannot do work that they did before; **and**
 - (ii) It is determined that the employee cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); **and**
 - (iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.
- (b) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

Section 109: Reasonable Emergency Measures to Contain Cost of Living Adjustments for Retirees
Retiree Cost of Living Adjustments

- (a) The City Manager shall propose, and the City Council shall adopt by ordinance, ~~a program of benefits applicable to all retirees (both current and future retirees)~~ the following, applicable to retirees (current

and future retirees employed as of the effective date of this Act):

(i) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees until January 2017;

After January 2017, the City Council may restore COLAs prospectively (in whole or in part), based upon the following considerations: (a) whether the fiscal emergency has eased sufficiently to ensure that the City can provide services protecting the health and well-being of City residents; (b) whether the criterion set forth Section 14 (b) (ii) has been met for the three year period beginning January 2017 or thereafter; and (c) whether retirees are continuing to receive a substantial and fair pension.

(ii) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1% for Current Employees who opted into the VEP and employees in Tier 2.

~~—Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in a year following the retirement of the employee.~~

~~(ii) Any supplemental payments shall not be funded from plan assets.~~

Section 11: Supplemental Payments to Retirees

Any supplemental payments to retirees in addition to those authorized herein shall not be funded from plan assets.

Section 1210: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System

Section 1321: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the

Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted ~~The City Manager shall certify that any plans adopted~~ pursuant to the Act shall: (i) ~~are~~ be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) ~~are~~ be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:
- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the

costs of the plans, and minimize any intergenerational transfer of costs.

- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- 1) the funding objectives and actuarial assumptions of the plans; and
 - 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 1432: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that any of the following conditions arise: (Condition 1) Essential City Services are not provided at or above the service levels of January 1, 2011; (Condition 2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011, is not operational -due to a budget-shortfall; or (Condition 3 (limited as described herein)) any of the City's pension or retiree healthcare plans have unfunded liabilities calculated on a market value or actuarial value greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official or binding act that allows or requires the City to do any of the

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following, without prior approval by the voters: (i) pay for unused sick leave time (ii) pay for accrued and unused vacation time, except at separation of City service as may be required by applicable state or federal law; (iii) increase compensation for members of bargaining units after contracts expire until a new contract is in effect; (iv) give automatic step increases or other raises for time in the job that are not based on performance; (v) use hours not actually worked in determining eligibility for overtime; (vi) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vii) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (viii) pay workers' compensation benefits beyond what state or federal laws require; (ix) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (x) calculate retirement benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law; (xi) make layoff or rehiring decisions without considering individual employee performance; (xii) pay for more than 50% of the increase in the cost of healthcare benefits. Nothing in this section shall be construed to mandate a particular level of service or method of service delivery.

For the purposes of this Act, unfunded liabilities for employees covered under the Federated City Employee's Retirement System and the Police and Fire Department Retirement Plan shall be treated separately. Thus, if Condition (3) arises, the consequences as specified in this Act shall ~~The provisions in~~

~~the event (3) is triggered are intended to apply only to those employees in the plan that has the unfunded liabilities.~~

~~Accordingly, For the purposes of this measure, retiree healthcare plans unfunded liabilities for employees covered under the Federated City Employee's Retirement System and the Police and Fire Department Retirement Plan shall be treated separately. if there is an unfunded liability in only the Federated plan the safety net provisions shall apply to employees in the Federated plan, and not those in the Police and Fire plan. Similarly, if there is an unfunded liability in only the Police and Fire plan, the safety net provisions shall apply only to employees in the Police and Fire plan.~~

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

- (i) At any time City pension or retiree healthcare plans have unfunded liabilities based on market value or actuarial value for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, ~~cost-of-living-increases,~~ or supplemental pension payments to retirees shall not be allowed, except upon prior approval of the voters.
- (ii) The limitations shall be temporary and shall remain in effect until the unfunded liabilities based on market value or actuarial value have remained below the level of June 30, 2010 for three consecutive years.

Section 1543: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(be) In the event Section 6, 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(cd) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

October 5, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Revised Draft Proposed Ballot Measure

Dear George and Robert:

On July 6, 2011, the City provided the POA and the San Jose Fire Fighters, IAFF, Local 230 a copy of the draft proposed ballot measure that incorporates the relevant elements from the May 13th memo and City Manager's Fiscal Reform Plan, as approved by the City Council. Subsequently, the City Council provided additional direction and a revised draft proposed ballot measure was provided on September 9th. Since then, in part based upon additional feedback and questions the City has received, the City Council has provided further direction regarding the draft proposed ballot measure. Enclosed please find a revised draft proposed ballot measure.

As you know, the City and the POA and San Jose Fire Fighters, IAFF, Local 230 have reached an agreement to negotiate concurrently on the issues of retirement reform and related ballot measure(s). We are currently scheduled to negotiate on these matters on October 5th, October 12th and October 20th and the City expects that a portion of the scheduled meetings will be designated to discuss the revised draft proposed ballot measure, as well as your recently provided proposals. As we previously communicated, the City believes additional sessions should be scheduled to discuss all retirement proposals prior to October 31, 2011.

POA and IAFF, Local 230
RE: Revised Draft Proposed Ballot Measure
October 5, 2011
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The City expressly reserves the right to propose other charter amendments pertaining to retirement issues, or to make changes to the attached draft ballot measure.

If you have any questions or concerns regarding this information, please do not hesitate to contact me.

Sincerely,



Alex Gurza
Director of Employee Relations

c: Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

Enclosure

DRAFT- October 5, 2011

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*The Employee Fair Pay Act for Fiscal Sustainability.*"

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to increase dramatically in the near future. In addition, the City's accrued unfunded liability for other post employment benefits – primarily health benefits – is similarly increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a public service emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no

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reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected levels of services are unsustainable, and endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that its pension and post employment benefit plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI, §5.

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Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree, including any cost of living increases received by retirees, as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City.

Section 3. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits. The City Council shall have no authority to agree to any increase in pension and/or retiree healthcare benefits, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 4. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to ensure the preservation of the tax status of the plan, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 5. Current Employees.

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (section 7).

(b) Unless they opt into a lower cost plan as provided in the Voluntary Election Program ("VEP," described herein), all Current Employees will share 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% annually until the employee's proportionate share of the cost reaches 50% of the

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pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The City Council shall adopt by ordinance the procedure and formulae necessary to implement this Section.

Section 6: Voluntary Election Program ("VEP")

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall be designed to permit Current Employees to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner if

applicable) where they acknowledge that they have irrevocably given up their existing level of retirement benefits and voluntarily chosen reduced benefits.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits under the VEP shall prospectively accrue based on the following limitations:

(i) the accrual rate shall be 1.5% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) the current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 60 for employees in the Police and Fire Department Retirement Plan and the age of 65 for employees in the Federated City Employees' Retirement System. Earlier retirement ~~may~~ shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age 55 in the Federated City Employees'

Retirement System and 50 in the Police and Fire
Department Retirement Plan.

- (iii) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually.
 - (iv) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (v) “final compensation” shall mean the average salary of the three highest consecutive years preceding the date of retirement.
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan related to past service.
- (d) ~~Survivorship benefits for Current Employees who do not opt into the VEP will remain the same. For employees who opt into the VEP, survivorship benefits shall be the same as the survivorship benefits in Tier 2 (benefits for new employees, as described in Section 7.).~~

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(e) VEP Disability Retirement Benefits.

- (i) A service connected "disability" retirement benefit, as hereinafter defined, shall be as follows:
 - a. The employee or former employee shall receive an annual benefit based on 45% of annual pensionable pay based on the average of the highest three consecutive years of service.
- (ii) A non-service connected disability retirement benefit shall be as follows:
 - a. The employee or former employee shall receive 1.5% times years of City Service (minimum 20% and maximum of 37.5%) of annual pensionable pay based on the average of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.
- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 7: Future Employees - Limitation on Retirement Benefits - Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such

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ordinance. This retirement program – for new employees – may be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of pensionable salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, the measuring period for determining “final compensation” shall be the average salary of the three highest consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System and at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(g) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 8: Disability Retirements

To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

- (a) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:
 - (i) An employee cannot do work that they did before; **and**
 - (ii) It is determined that the employee cannot perform any other jobs described in the City's

classification plan because of his or her medical condition(s); **and**

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(b) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

Section 9: Reasonable Cost of Living Adjustments for Retirees

(a) The City Manager shall propose, and the City Council shall adopt by ordinance, a program of benefits applicable to all retirees (both current and future) as follows:

(i) Cost of living adjustments ("COLAs") shall be adjusted for all retirees, such that the COLAs are limited to the consumer price index, (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in a year following the retirement of the employee.

(ii) Any supplemental payments shall not be funded from plan assets.

Section 10: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 11: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. The City Manager shall certify that any plans adopted pursuant to the Act: (i) are actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) are prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:
- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- 1) the funding objectives and actuarial assumptions of the plans; and

- 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 12: Safety Net Provisions

(a) Preservation of Essential City Services

At any time that: (1) Essential City Services are not provided at or above the service levels of January 1, 2011; (2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011, is not operational due to a budget shortfall; or (3) any of the City's pension or retiree healthcare plans have unfunded liabilities calculated on a market value or actuarial value greater than those liabilities existing as of June 30, 2010; then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official or binding act that allows or requires the City to do any of the following, without prior approval by the voters:

- (i) pay for unused sick leave time
- (ii) pay for accrued and/or unused vacation time, except at separation of City service, ~~except as may be required by applicable state or federal law;~~
- (iii) increase compensation for members of bargaining units after contracts expire;
- (iiiiv) give automatic step increases or other raises for time in the job that are not based on performance;
- (iv) use hours not actually worked in determining eligibility for overtime ~~or for retirement benefits;~~
- (vi) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act

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(“FLSA”), or who are otherwise exempt from the FLSA; (vii) pay workers’ compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (viii) pay workers’ compensation benefits beyond what state or federal laws require; (ix) allow existing or former employees to grant workers’ compensation or disability benefits for existing or former employees; (x) calculate retirement benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law; (xi) make layoff or rehiring decisions without considering individual employee performance; (xii) pay for more than 50% of the increase in the cost of healthcare benefits.

The provisions in the event (3) is triggered are intended to apply only to those employees in the plan that has the unfunded liabilities. For the purposes of this measure, retiree healthcare plans unfunded liabilities for employees covered under the Federated City Employee’s Retirement System and the Police and Fire Department Retirement Plan shall be treated separately.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

- (i) At any time City pension or retiree healthcare plans have unfunded liabilities based on market value or actuarial value for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, cost of living increases, or supplemental

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pension payments to retirees shall not be allowed, except upon prior approval of the voters.

- (ii) The limitations shall be temporary and shall remain in effect until the unfunded liabilities based on market value or actuarial value have remained below the level of June 30, 2010 for three consecutive years.

Section 13: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

~~(b) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to retirees, then all benefit enhancements or increases (including pension and other post employment benefits of any kind) granted to retirees since the date of their retirement shall be eliminated.~~

(c) In the event either Section 5, 6, or 9 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

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(d) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

DRAFT

September 9, 2011

George Beattie
President
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1151 North Fourth Street
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RE: Revised Draft Proposed Ballot Measure

Dear George and Robert:

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As you know, the City and the POA and San Jose Fire Fighters, IAFF, Local 230 have reached an agreement to negotiate concurrently on the issues of retirement reform and related ballot measure(s). We are currently scheduled to negotiate on these matters on September 13th and 15th and the City is open to designating a portion of the meeting to discuss the revised draft proposed ballot measure, including any proposed changes that you may have.

The City expressly reserves the right to propose other charter amendments pertaining to retirement issues, or to make changes to the attached draft ballot measure.

POA and IAFF, Local 230
RE: Revised Draft Proposed Ballot Measure
September 9, 2011
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If you have any questions or concerns regarding this information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina Donnelly', written in a cursive style.

Gina Donnelly
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

Enclosure

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
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The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *“The Employee Fair Pay Act for Fiscal Sustainability.”*

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These cuts to Essential City Services have already created a public service emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no

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reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected levels of services are unsustainable, and endanger the health, safety and well-being of the residents of San Jose.

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The City and its residents always intended that its pension and post employment benefit plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI, §5.

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This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree, including any cost of living increases received by retirees, as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City.

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The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits. The City Council shall have no authority to agree to any increase in pension and/or retiree healthcare benefits, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

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Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to ensure the preservation of the tax status of the plan, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 5. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (section 7).

(b) Unless they opt into a lower cost plan as provided in the Voluntary Election Program ("VEP," described herein), all Current Employees will share 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% annually until the

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employee's proportionate share of the cost reaches 50% of the pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The City Council shall adopt by ordinance the procedure and formulae necessary to implement this Section.

Section 6: Voluntary Election Program ("VEP")

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall be designed to permit Current Employees to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service.

The VEP shall have the following features and limitations:

- (a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.
- (b) On and after the effective date of the ordinance, pension benefits under the VEP shall prospectively accrue based on the following limitations:
- (i) the accrual rate shall be 1.5% of "final compensation", hereinafter defined, per year of service for future years of service only.
 - (ii) the current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 60 for employees in the Police and Fire Department Retirement Plan and the age of 65 for employees in the Federated City Employees' Retirement System. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.
 - (iii) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually.

- (iv) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (v) “final compensation” shall mean the average salary of the three highest consecutive years preceding the date of retirement.
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan related to past service.
- (d) Survivorship benefits for Current Employees who do not opt into the VEP will remain the same. For employees who opt into the VEP, survivorship benefits shall be the same as the survivorship benefits in Tier 2 (benefits for new employees, as described in Section 7.).
- (e) VEP Disability Retirement Benefits.
 - (i) A service connected “disability” retirement benefit, as hereinafter defined, shall be as follows:
 - a. The employee or former employee shall receive an annual benefit based on 45% of annual

pensionable pay based on the average of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

a. The employee or former employee shall receive 1.5% times years of City Service (minimum 20% and maximum of 37.5%) of annual pensionable pay based on the average of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 7: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – may be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of pensionable salary. In no event shall the City contribution to such plan exceed 50% of the cost

of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, the measuring period for determining "final compensation" shall be the average salary of the three highest consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System and at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of

contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(g) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 8: Disability Retirements

To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

- (a) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:
 - (i) An employee cannot do work that they did before; **and**
 - (ii) It is determined that the employee cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); **and**
 - (iii). The employee's disability has lasted or is expected to last for at least one year or to result in death.

- (b) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

Section 9: Reasonable Cost of Living Adjustments for Retirees

- (a) The City Manager shall propose, and the City Council shall adopt by ordinance, a program of benefits applicable to all retirees (both current and future) as follows:

- (i) Cost of living adjustments ("COLAs") shall be adjusted for all retirees, such that the COLAs are limited to the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in a year following the retirement of the employee.

- (ii) Any supplemental payments shall not be funded from plan assets.

Section 10: Retiree Healthcare

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) Reservation of Rights. No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

Section 11: Actuarial Soundness (for both pension and retiree healthcare plans)

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. The City Manager shall certify that any plans adopted pursuant to the Act: (i) are actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) are prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the

contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- 1) the funding objectives and actuarial assumptions of the plans; and
 - 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 12: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that: (1) Essential City Services are not provided at or above the service levels of January 1, 2011; (2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011, is not

operational due to a budget shortfall; or (3) any of the City's pension or retiree healthcare plans have unfunded liabilities calculated on a market value or actuarial value greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official or binding act that allows or requires the City to do any of the following, without prior approval by the voters:

- (i) pay for unused sick leave or unused vacation time, except as required by applicable state or federal law;
- (ii) increase compensation for members of bargaining units after contracts expire;
- (iii) give automatic step increases or other raises for time in the job that are not based on performance;
- (iv) use hours not actually worked in determining eligibility for overtime or for retirement benefits;
- (v) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA;
- (vi) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability;
- (vii) pay workers' compensation benefits beyond what state or federal laws require;
- (viii) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees;
- (ix) calculate retirement benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law;
- (x) make layoff or rehiring decisions without considering individual employee performance;
- (xi) pay for more than 50% of the increase in the cost of healthcare benefits.

The provisions in the event (3) is triggered are intended to apply only to those employees in the plan that has the unfunded liabilities. For the purposes of this measure, retiree healthcare plans for employees covered under the Federated City Employee's Retirement System and the Police and Fire Department Retirement Plan shall be treated separately.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

- (i) At any time City pension or retiree healthcare plans have unfunded liabilities based on market value or actuarial value for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, cost of living increases, or supplemental pension payments to retirees shall not be allowed, except upon prior approval of the voters.
- (ii) The limitations shall be temporary and shall remain in effect until the unfunded liabilities based on market value or actuarial value have remained below the level of June 30, 2010 for three consecutive years.

Section 13: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable

by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to retirees, then all benefit enhancements or increases (including pension and other post employment benefits of any kind) granted to retirees since the date of their retirement shall be eliminated.

(c) In the event either Section 5, 6, or 9 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(d) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

July 6, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Draft Proposed Ballot Measure

Dear George and Robert:

As you know, the City Council approved the memorandum dated May 13, 2011, issued by Mayor Reed, Vice Mayor Nguyen and Councilmembers Herrera and Liccardo. This memo, approved by the City Council on May 24th, included direction to staff to prepare a draft ballot measure that would include various proposed changes to the Charter regarding retirement benefits for new employees, current employees and current and future retirees. As you know, the City Council approved other items related to fiscal reform, including the City Manager's Fiscal Reform Plan and other retirement related issues, during the May 24th and June 24th Council meetings.

We wanted to provide you a copy of the draft proposed ballot measure that incorporates the relevant elements from the May 13th memo and City Manager's Fiscal Reform Plan, as approved by the City Council. (Enclosed is the draft proposed ballot measure.) The City is open to discussing any changes to the draft proposed ballot measure. The City expressly reserves the right to propose other charter amendments pertaining to retirement issues, or to make changes to the attached draft in the form of ballot measures.

The City and the POA and Local 230 have a scheduled negotiation session for Wednesday, July 13th, and the City is open to designating a portion of the meeting to discuss the draft

POA and IAFF
RE: Draft Proposed Ballot Measure
July 6, 2011
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proposed ballot measure, including any proposed changes that you may have. In addition, you are also free to make a proposal on any other retirement issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina Donnelly". The signature is fluid and cursive, with a large initial "G" and "D".

Gina Donnelly
Deputy Director of Employee Relations

c: John Tennant, POA General Counsel
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Chris Platten, IAFF, Local 230 Legal Counsel

Enclosure

**PUBLIC EMPLOYEE PENSION PLAN
AMENDMENTS - TO ENSURE FAIR AND
SUSTAINABLE RETIREMENT BENEFITS WHILE
PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *“The Employee Fair Pay Act for Fiscal Sustainability.”*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community center (hereafter “Essential City Services”).

The City and its citizens are threatened by climbing costs of employee benefit costs imposed by its current pension and other post employment benefit programs. The employer cost of the City’s retirement plans is expected to increase dramatically in the near future. In addition, the City’s accrued unfunded liability for other post employment benefits – primarily health benefits –

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is similarly increasing. To adequately fund these costs, the City would be required to cut other services annually.

These costs have created a public service emergency, because they jeopardize the City's ability to provide Essential City Services. In the last year, the City eliminated numerous police officers and firefighter positions. Because the cost of these benefits is rising so rapidly, and because of current economic conditions and legal restrictions that limit revenue growth, these costs are expected to lead to a critical reduction in police and fire services as compared to June 2010. By any measure, such levels are unsustainable, and endanger the residents of San Jose.

These future liabilities associated with the City's adoption and enhancements of its post employment programs were not adequately analyzed or understood at the time the benefits were adopted or enhanced. Although the City exercised due diligence at the time, it was impossible to anticipate the staggering declines in the funded status of the retirement fund or the alarming rate of increase in post-employment health care costs.

Without the reasonable cost containment as provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its citizens always intended that its pension and post employment plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its citizens.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's economic stability, at the same time it allows for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of adoption of the City's post employment benefit programs.

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The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act (“MMBA”), Government Code section 3504.5.

Section 2: INTENT

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly in order to preserve the health, welfare and benefit of its citizens.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act’s effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the current pension amounts received by any retiree, including any cost of living increases received by retirees to date.

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This Act is not intended to grant any vested rights to any post employment benefit, as the City retains its power to amend, change or terminate any retirement or other post employment benefit program provided by the City.

This Act is intended to ensure the City can provide sustainable post employment benefits while at the same time delivering essential services to the citizens of San Jose.

This Act is intended to express the City's management priorities with respect to employee compensation.

Section 3. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits to the extent they exceed the maximums set forth in this measure. The City Council shall have no authority to agree to any matters pertaining to pensions or other post-employment benefits exceeding the maximums set forth in this measure.

Section 4. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to amend, change or repeal any retirement or other post employment benefit program under the Charter.

Section 5. Voluntary Election Program

The City Manager shall propose, and the City Council shall adopt by ordinance, a Voluntary Election Program ("VEP") that permits current City employees the option to join a new and less costly retirement program.

The VEP benefits will be less costly, and may contain the following features: (a) a slower accrual rate; (b) an increase in the eligibility age; and (c) an increase in the years of service requirement for medical benefits.

Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the VEP.

Section 6: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – may be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of base salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan. The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement

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may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(d) For any defined benefit plan, the measuring period for determining “final compensation” shall be the average salary of the three consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Any plan adopted by the City Council is subject to termination or amendment in the Council’s discretion. No plan shall create a vested right to any benefit.

[DISABILITY RETIREMENT – LANGUAGE TO COME]

Section 7: Current Employees – Reasonable Modifications to Existing Plans – Modified Tier 1

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a modified retirement program for all employees eligible to be members of the existing retirement plans of the City as of the effective date of this Act.

The modified programs may be referred to as “Modified Tier 1” and shall have the following limitations:

(a) The plan shall not deprive any current or former employees of benefits earned and accrued for prior service as of the modified plan’s effective date; thus, benefits earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits shall prospectively accrue based on the following limitations:

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(i) benefits shall accrue at a maximum rate of 1.5% per year of service.

(ii) the age of eligibility for service retirement for existing employees shall increase by six months annually on July 1 until the retirement age reaches the age of 60 for police officers and firefighters and 65 for all other employees. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(iii) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(iv) The measuring period for determining “final compensation” shall be the average salary of the three consecutive years preceding the date of retirement.

**Section 8: Reasonable Cost of Living
Adjustments for Current Retirees**

1. The City Manager shall propose, and the City Council shall adopt by ordinance, a program of benefits applicable to all current retirees as follows:

(a) Cost of living adjustments ("COLAs") shall be adjusted for all retirees, such that the COLAs are limited to the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

2. Any supplemental payments shall not be funded from plan assets.

Section 9: Retiree Health Care Insurance Plans

The City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a modified retiree health care program (including medical and dental) with the following limitations:

(a) **Current Employees:** The years of service required to qualify for retiree health care benefits shall increase by six months annually on July 1,

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until it reaches 20 years, except for employees who receive such health insurance based on a service disability retirement.

(b) New Employees: The years of service required to qualify for retiree health care benefits shall be 20 years, except for employees who receive such health insurance based on a service disability retirement.

(c) Minimum Contributions. Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare.

(d) Reservation of Rights. No retiree health care plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

Section 10: Actuarial Soundness

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent audit using standards set by the Government Accounting Standards Board. The

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City Manager shall certify that any plans adopted pursuant to the Act: (i) are actuarially sound; (ii) minimize any risk to the City and its citizens; and (iii) are prudent and reasonable in light of the economic climate.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board.

Section 11: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that: (1) Essential City Services are not provided at or above the service levels of January 1, 2011; (2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011 are not operational; or (3) any of the City's pension plans have unfunded liabilities greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from

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making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official act that allows or requires the City to do any of the following, without prior approval by the voters: (i) pay for unused sick leave or unused vacation time, except as required by applicable state or federal law; (ii) increase compensation for members of bargaining units after contracts expire; (iii) give automatic step increases or other raises for time in the job that are not based on performance; (iv) use hours not worked in determining eligibility for overtime or for retirement benefits; (v) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vi) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (vii) pay workers' compensation benefits beyond what state or federal laws require; (viii) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (ix) calculate retirement

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benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law; (x) make layoff or rehiring decisions without considering individual employee performance; (xi) pay for more than 50% of the increase in the cost of healthcare benefits.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

(1) At any time City pension or retiree health care plans have unfunded liabilities for pension or retiree healthcare greater than those liabilities existing as of June 30, 2010, the following limitations shall be in effect for existing employees who have not opted into the benefits program for new employees, except upon approval by the voters:

(i) Retirement benefits shall not continue to accrue beyond the minimum benefits specified in the Charter, Article XV.

(ii) Calculation of benefit payments shall be based on a three year average as specified in the Charter, Article XV.

(iii) The age of eligibility for payment of service retirement benefits shall not be less than the retirement age specified in the Charter, Article XV.

(iv) Benefits shall not be increased after retirement.

(v) Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the benefits program for new employees.

(2) At any time City pension or retiree healthcare plans have unfunded liabilities for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, increases, or supplemental pension payments to retirees shall

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not be allowed, except upon prior approval of the voters.

(3) The provisions shall be temporary and shall remain in effect until the unfunded liabilities have remained below the level of June 30, 2010 for three consecutive years.

Section 12: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to retirees, then all benefit enhancements or

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increases (including pension and other post employment benefits of any kind) granted to retirees since the date of their retirement shall be eliminated.

(c) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to existing employees, then the existing employees' share of the costs to amortize any unfunded liabilities shall be 50% unless the employees have opted into the VEP benefit levels.

(d) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

EXHIBIT D



San Jose Fire Fighters • Local 230

425 E. Santa Clara Street, Suite 300, San Jose, CA 95113 • (408) 286-8718 • FAX (408) 286-2577



March 2, 2012

Alex Gurza, Deputy City Manager,
City of San Jose – Office of Employee Relations
200 E. Santa Clara Street
San Jose, CA 95113

Re: San Jose Fire Fighters, Local 230 & San Jose Police Officer's Association Retirement Reform

Dear Alex,

Please find the attached proposal from San Jose Fire Fighters, Local 230 and the San Jose Police Officer's Association. This offer provides substantial savings to the City both in the near and long-term. Our proposal achieves lawful, structural reform for the city, employees and the taxpayers.

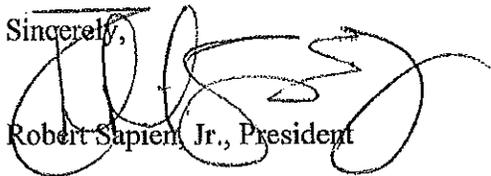
We understand from our mediation and negotiation sessions with the City that you have a concern regarding the participation rates of current employees in our "opt-in" proposal for Tier II. As such, we are offering a major pension reform enhancement contained in our offer: the **Reform Immediate Performance Guarantee**.

In short, we've structured our opt-in proposal so that **the city is guaranteed the savings of 100% employee participation**, even if the employee election rate falls short of that target. Our internal polling data showed that our participation rate would meet or exceed 66% for our proposal. **If fewer than 60% of all active members opt into Tiers II or III, we will agree to pay reductions on a sliding scale up to 16% to help achieve the savings goal (details attached).**

We believe our guarantee provides the City with the assurances it stated it needed in order to accept our proposal. **This is a viable, lawful strategy to achieve pension reform that saves the City tens of millions of dollars each and every year.**

Throughout the negotiations process we have been committed to lawful pension reform. This proposal demonstrates our seriousness to addressing this challenge to benefit the City, employees and the residents we serve.

Sincerely,



Robert Sapien, Jr., President



SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY
Objective: Lawful & Cost-Saving Pension Reform

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Final Average Salary	3 Year Final Average Salary	No Change
No Sick Leave Payout	No Sick Leave Payout	No Change
Sick Leave Conversion 20965	Sick Leave Conversion 20965	No Change
4th Level Survivor Death Benefit (Spouse & Children) 21574	4th Level Survivor Death Benefit (Spouse & Children) 21574	No Change
Post Retirement Survivor Allowance 21624, 21626, and 21628	Post Retirement Survivor Allowance 21624, 21626, and 21628	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	No SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change Remains 8:3 split
Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap
Military Service Credit 21024	Military Service Credit 21024	No change
Alternative Death Benefit 21547.7	Alternative Death Benefit 21547.7	No change
Term: 4 Years		

*Retiree Health Care Purchasing Protection Provision

Age at Date of Hire	Years of Service	Age at Retirement	Current Plan	Tier II (Actives)	Tier III
25	25	50	75%/ 70%	60%	50%
25	28	53	84%/ 82%	77.28%	67.76%
25	30	55	90%/ 90%	90%	81%

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY
Objective: Lawful & Cost-Saving Pension Reform

Pension Reform Performance Guarantee

To address concerns about the reliability of the member polling data and guaranteed savings, the following Reform Immediate Performance Guarantee is included with the proposal. Polling data indicated that the participation rate would meet or exceed 66% for this proposal.

If fewer than 60% of all active members opt into Tiers II or III, pay reductions based upon participation rates will result as indicated below. Calculation will be inclusive of all active members (Tier I Tier II). Beginning the first February 1 date following the establishment of the Tier II option, annual pay reductions of no greater than 4% up to 16% at the lowest participation level.

Example: If only 50% of all active members opt into the new plan then all plan members will take a 4% pay reduction in the first year and 2% in the second year.

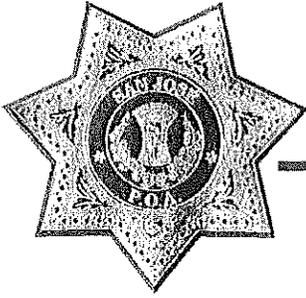
Opt-In Rate (all actives)	Reform Immediate Performance Guarantee	Additional Savings* (Millions) estimated
<100%	--	100% Participation = \$29.9
<90%	--	90% Participation = \$26.9
<80%	--	80% Participation = \$23.9
<70%	--	70% Participation = \$21.1
<60%	4% Pay Reduction	\$7.4 Pay Reduction + \$20.1 Opt In Savings = \$27.5
<50%	6% Pay Reduction	\$11.1 Pay Reduction + \$16.1 Opt In Savings = \$27.2 Million
<40%	8% Pay Reduction	\$14.9 Pay Reduction + 13.9 Opt In Savings = \$28.6
<30%	10% Pay Reduction	\$18.6 Pay Reduction + \$11.9 Opt In Savings = \$30.5
<20%	14% Pay Reduction	\$26.0 Pay Reduction + \$9.9 Opt In Savings = \$35.9
<10%	16% Pay Reduction	\$29.7 Payroll + \$8.1 Opt In Savings = \$37.8

*In 2010, Police and Fire employees agreed to a 10% decrease in pay resulting in substantial savings in pension costs. A similar proportionate effect would occur if additional reductions are triggered by the Performance Guarantee. These additional savings are not included in these estimates.

Retiree Medical Benefit

Adopt Kaiser "High Deductible" Plan and provide a Retiree Healthcare Purchasing Protection Provision (i.e., Retirees will contribute equivalent to actives).

Adoption of this plan will result in a dramatic decrease to the Retirement Healthcare Plan's annual premium cost and a lowering of the current unfunded healthcare liability.



SAN JOSE POLICE OFFICERS' ASSOCIATION

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Telephone 408-298-1133 • Facsimile 408-298-3151 • E-Mail@sjpoa.com

December 1, 2011

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Revised SJPOA Retirement Proposal

Dear Mr. Gurza:

The SJPOA and Local 230 submitted a revised retirement proposal to the City on November 8, 2011. We proposed a three-tier model to incorporate the savings we had promised under our CalPERS model, but realized under the San Jose Police and Fire Retirement System. Additionally, we agreed to support a joint City-labor ballot proposition implementing our proposal.

Notwithstanding that we have had no response to that proposal or to our request to return to the bargaining table, the SJPOA today proposes to reinstate the retirement plan provision in place prior to 1997 as a second-tier that will be available to active employees who opt to participate in it and to new hires. This proposal should be considered in tandem with the one filed earlier today by our brothers and sisters at Local 230.

Benefit	Tier 1 (Actives)	Tier II (Opt-In and New Hires)
Max Benefit	Status Quo	75%
Accrual Rate	2.5% / 4% per year	2.5% per year
Age/Years of Service	25 years @ age 50 20 years @ age 55 30 years any age	25 years @ age 50 20 years @ age 55 30 years any age
FAS Calculation	12 Months Final Average Salary	36 Months Final Average Salary
COLA	3%	CPI-U 3% with Banking Feature
Normal Cost (8/3 split) (No Need for Charter Change)	Status Quo	Status Quo
Unfunded Liability	Status Quo	Status Quo
SRBR	Convert to GPP*	Convert to GPP*
Sick Leave Payout	Status Quo	Convert to Service Time

Alex Gurza
Re: Revised SJPOA Retirement Proposal
December 1, 2011
Page 2

Benefit	Tier 1 (Actives)	Tier II (Opt-In and New Hires)
Retiree Health Care Pre-Funding	1 Year Diversion Proposal	1 Year Diversion Proposal
Disability Reform	"Long Beach Model" Worker's Compensation Dispute Resolution Process	"Long Beach Model" Worker's Compensation Dispute Resolution Process
Health Care for Actives	Status Quo	100% LPP Single Coverage for new hires (status quo for actives)

*Guaranteed Purchasing Power (GPP): Transition from SRBR benefit to GPP estimated to save 6 million annually.

We reiterate that a critical element of the proposal remains the SJPOA's proposing to forego proceeding to the pending interest arbitration concerning the duration of the ten-percent wage reduction and the term of the Memorandum of Agreement (recently agreed to by the SJPOA and the City concerning all non-retirement terms and conditions of employment), if the City accepts the unions' joint retirement proposal. In other words, should the City agree to our retirement proposal, the SJPOA will agree that the MOA is of a two-year duration and that the 10% wage reduction does not sunset.

Furthermore, the opt-in contained in the above table would replace the SJPOA-only opt-in plan in the Memorandum of Agreement (recently agreed to by the SJPOA and the City concerning all non-retirement terms and conditions of employment).

We believe this proposal goes a long way towards reducing the City's retirement costs going forward—perhaps the single greatest priority that your bargaining representatives explained to us throughout our summer of bargaining. We think that this proposal has strong "win-win" potential, and we encourage the City to send its negotiators back to the table to try to reach a bilateral accord on how to maximize the number of active employees who opt into Tier II, as described in the table. Additionally, the parties should return to the table to discuss the impact of the significantly reduced City pension obligation for FY 2013 as contained in the Cheiron Report, as adopted today by the Retirement Board.

As challenging as these discussions have been on both sides, we believe that developments in the last 48-hours, and particularly these revised proposals from Police and Fire offer a great opportunity to resolve these issues collaboratively.

Very truly yours,

SAN JOSE POLICE OFFICERS' ASSOCIATION



Jim C. Unland, President

Alex Gurza
Re: Revised SJPOA Retirement Proposal
December 1, 2011
Page 3

cc: John R. Tennant, General Counsel
Gregg McLean Adam, Esq.



425 E. Santa Clara St., #300
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SAN JOSE

FIRE FIGHTERS & POLICE OFFICERS



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(408) 298-1133
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November 18, 2011

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Revised POA/Fire Fighter Proposal

Dear Mr. Gurza:

Please consider this a revised proposal by the San Jose Fire Fighters, IAFF Local 230 (Fire) and the San Jose Police Officers' Association (POA).

In recent days, our organizations have been advised of the City's opposition to a move to the California Public Employees Retirement System (CalPERS), an inherent feature of the Fire/POA proposal. We also understand that the City has an absolute demand that any retirement agreement must go before the voters.

Accordingly, and in the interest of continuing to try to find a collaborative resolution to the City's pension cost difficulties, we request that the City direct its negotiators to return to the bargaining table to discuss:

1. Trying to agree on the details of a proposal that would incorporate the savings and the features of our CalPERS proposal, but which would be designed to keep employees in the San Jose Police and Fire Retirement System. That is, let us try to agree on a three-tier model that achieves the savings we propose, but which keeps us, as is the City's express wish, in the City's retirement system. No one would go to CalPERS under our proposal.
2. A joint City/Fire/POA proposed Charter amendment that would seek to have the voters ratify and enshrine in the City Charter the agreement we hope can be achieved under paragraph 1 above.

This proposal represents a fundamental shift in the unions' position. We are dropping our proposal to move to CalPERS in order to satisfy what we understand is a philosophical demand of the City.

Alex Gurza
Re: Revised POA/Fire Fighter Proposal
November 18, 2011
Page 2

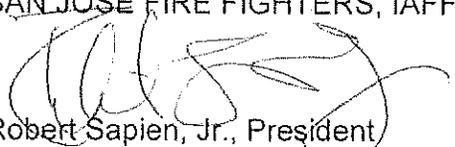
Furthermore, this revised proposal retains all of the other features of our prior proposal, most importantly: (1) The agreement by the POA to continue its 10% total compensation concession through June 30, 2013 and ongoing thereafter until revised by subsequent agreement by the parties; and (2) an additional 5% saving, based upon a transfer of healthcare costs, and an additional contribution from both police and fire.

This proposal contemplates a 75% cap under the third tier to be agreed upon for new employees.

We believe that the recent mediation between the parties, concluded Wednesday, was a worthwhile endeavor that triggered the type of frank and collaborative discussions that the formal bargaining process lacked. We believe that there was positive movement by both sides in that process that gives us significant hope that an agreement can be reached by returning to the bargaining table.

Very truly yours,

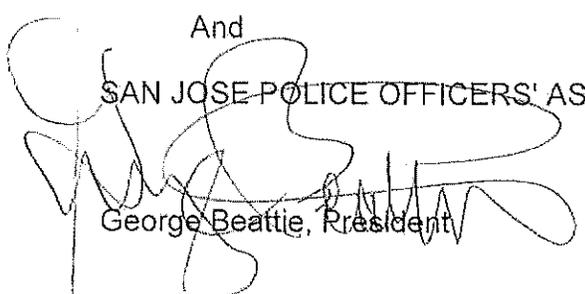
SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230



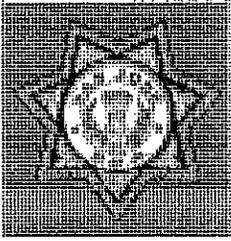
Robert Sapien, Jr., President

And

SAN JOSE POLICE OFFICERS' ASSOCIATION



George Beattie, President



San Jose Police Officers and Fire Fighters



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San Jose, CA 95113
Phone #(408) 286-8718

November 11, 2011

Alex Gurza, Deputy City Manager
City of San Jose - Office of Employee Relations
200 E. Santa Clara Street
San Jose, CA 95113

RE: Retirement Reform

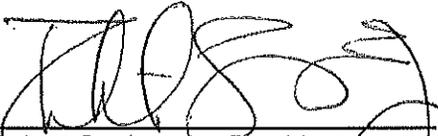
Dear Alex:

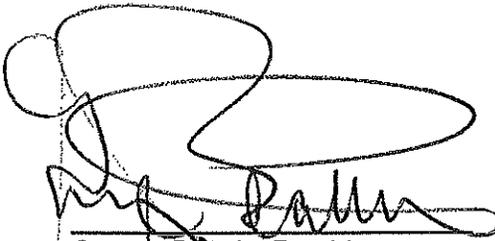
Please find the attached revised Proposal and Proposal Addendum.

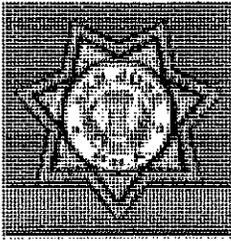
In the proposal you will find some modifications including a lawful and cost saving proposal to address the SRBR in Tier I, and in the addendum to the proposal, you will find a proposal to ensure that critical public safety services are preserved and/or restored in 2012-13. Please note that the addendum to the proposal expires on November 17, 2011.

We look forward to seeing you and your team in mediation on Tuesday, November 15, and 1:30 p.m. at the SJPOA offices.

Thank you,


Robert Sapien, Jr., President
San Jose Firefighters, IAFF Local 230


George Beattie, President
San Jose Police Officers Association



San Jose Police Officers and Fire Fighters



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SAN JOSE POLICE OFFICERS ASSOCIATION AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230 RETIREMENT REFORM PROPOSAL

[As Amended, November 11, 2011]

TIER III: RETIREMENT BENEFITS FOR NEW EMPLOYEES

I. Pension Formula 2.0% @ 50 for Local Safety Members CALPERS Section 21362

The pension benefit for eligible employees hired on or after July 1, 2012, shall be administered by CalPERS and be entered into their Section 21362 2% @ 50 Full Formula. This formula provides to local safety members 2% of pay at age 50 for each year of service credited with that employer. The percent per year of service gradually increases for each age attained from 2% at age 50 to 2.7% at age 55+. Local safety members subject to the 2% @ 50 Full Formula contribute 9% of reportable earnings.

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 2% @ 50 formula cannot exceed 90% of final compensation.

II. Annual Cost of Living Allowance Increase - COLA Section 21335

Allowances for retired members are currently covered by an annual 2.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 2.0%.

For example: COLA for retired members shall be based on an annual Consumer Price Index (CPI) factor with a 2.0% maximum cost-of-living increase, whichever is lower.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a

domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

- a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
- b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Credit Unused Sick Leave to Service Credit Section 20965

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave

(i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

VII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute an additional 1.0% toward retirement contribution to lower the cost of the City's pension payments. This additional 1.0% shall be credited to each member's normal cost, for a maximum of 10.0% employee contribution towards pension normal cost.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
4. Some of the optional benefits available, such as 1959 Survivor Benefits and Post-Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

VIII. Military Service Credit 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999-2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

IX. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires that are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children;
or three or more eligible children only \$2,280

Spouse or domestic partner with one eligible child; or two eligible children only ... \$1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older;

or dependent parents \$950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

X. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the

agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XI. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER III retirement plan.

XII. Retiree Health Care

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost premium for a non-deductible medical insurance plan, single coverage. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

XIII. Disability Retirees Health Care

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical insurance plan regardless of years of service.

XIV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

XV. Retiree Dental Insurance

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible dental insurance plan. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards a single non-deductible dental insurance plan regardless of years of service.

XVI. Surviving Dependants - Employee killed in the line of duty

Surviving dependents of an employee killed in the line of duty shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical and dental insurance plan.

XVII. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

TIER II: VOLUNTARY RETIREMENT BENEFITS ELECTION FOR CURRENT EMPLOYEES

On or before March 1, 2012 active employees shall make a voluntary irrevocable decision to have CalPERS administer their pension benefits beginning July 1, 2012. Any employee hired between March 1, 2012 and June 30, 2012 shall have TIER II pension benefits.

I. Pension Formula 3.0% @ 55 For Local Safety Members Section 21363.1

This formula provides to local safety members 3% of pay at age 55 for each year of service credited with that employer. For members who retire earlier, the percentage of pay is reduced to 2.400% at age 50, which gradually increases for each attained age to 3% at age 55+. Local safety members subject to the 3% @ 55 Full or Supplemental formulas contribute 9% of reportable earnings. Those covered under the 3% @ 55 Modified formula (coordinated with Social Security) contribute 9% of reportable earnings in excess of \$133.33. (A formula change affecting the members' contribution rate requires an election of the affected members.)

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 3% @ 55 formula cannot exceed 90% of final compensation.

II. Cost of Living Allowance - COLA Section 21335

Allowances for retired members of the TIER II retirement plan shall be an annual 3.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 3.0%.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, and 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

- a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
- b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

VII. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick

leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

- With respect to this Fire/POA sick leave proposal, if any law is enacted (via legislation, ballot proposition, or the like) that negatively affects (from a financial perspective) the conversion of sick leave to service credit under this proposal, then the sick leave elements of this proposal will be nullified and the parties will return to the status quo as it existed on September 15, 2011 (i.e., with the City invoking its right to meet and confer with both Fire and POA about the sick leave cash out).

VIII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute 1% additional retirement contribution to the cost of pension payments. A max of 10% of employee contributions towards pension.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's

account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.

4. Some of the optional benefits available, such as 1959 Survivor Benefits and Post-Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

XI. Military Service Credit Section 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999-2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

X. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit,

the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires that are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children; or three or more eligible children only	\$2,280
Spouse or domestic partner with one eligible child; or two eligible children only ...	\$1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older; or dependent parents	\$950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five year of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XI. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ

of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER II retirement plan. All members who voluntarily irrevocably move into the TIER II retirement plan shall forfeit all rights to any future SRBR earnings and or payments.

XIII. Retiree Health and Dental Care

All TIER II participants shall receive all Retiree Health and Dental Insurance benefits as TIER I members.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

XV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

TIER I: RETIREMENT BENEFITS FOR CURRENT EMPLOYEES

Current Retirement Benefits in effect for both SJPOA and IAFF Local 230 members respectively shall remain status-quo but for the following provision changes.

I. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

II. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report to Retirement Services only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage of retirement allowable.

The City of San Jose shall direct retirement services to perform and add into the valuation the value of this benefit. The City of San Jose shall be 100% responsible for the normal cost determined by this valuation. Estimated impact on normal cost to be 0.1%-0.2% of payroll for both groups.

III. Supplemental Retiree Benefit Reserve

Exchange SRBR on Tier I employees and retirees who will have vested rights for a Guaranteed Purchasing Power (GPP) plan; permit the fund to re-capture SRBR funds to be applied against the UAAL.

Both the City and Unions' will support and make a request to the Police and Fire retirement board to perform a "NEW" valuation that takes into account the SRBR / GPP changes, and to implement adjusted contribution rates accordingly.

IV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to prefund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

V. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

ALL TIERS:

I. Workers Compensation Reform

THE LABOR-MANAGEMENT WORKERS' COMPENSATION SUPPLEMENTAL DISPUTE RESOLUTION AGREEMENT "LONG BEACH MODEL" SHALL APPLY TO ALL THREE (3) TIERS. TIER I, TIER II, AND TIER III EMPLOYEES.

This Agreement is pursued pursuant to California Labor Code Section 3201.7(a)(3)(c). Nothing in this agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by the employer as otherwise provided in Division 4 of the Labor Code. Nothing in this agreement denies to any employee the right to representation by counsel at all stages during the alternative dispute resolution process.

Purpose.

The purposes of this proposal are:

1. To provide active employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement to facilitate their prompt return to work;
2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") section 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement;
3. To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers' compensation; and
4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs to the City.

These purposes will be achieved by utilizing an exclusive list of medical providers to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(c).

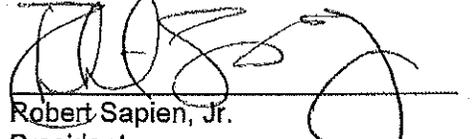
The Unions renew its proposal for all three Tiers of employees.

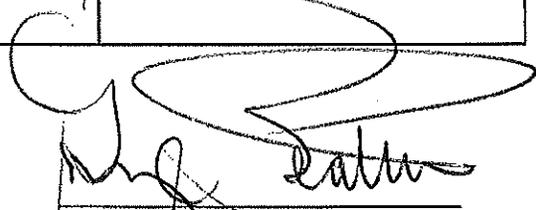
- Tier III employees will not be a participant or recipient of SRBR.
- Tier II employees will forfeit SRBR payments and participation upon voluntarily electing into Tier II. Furthermore, as additional savings, the assets forfeited by Tier II employees shall be rolled into the retiree medical plan to offset unfunded liabilities.
- Tier I employees will be subject to the outcome of bargaining between the City and Unions.

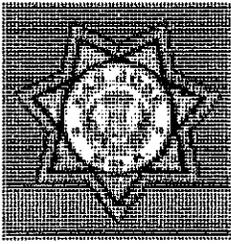
**SAN JOSE POLICE OFFICERS ASSOCIATION
AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230
RETIREMENT REFORM PROPOSAL
AMENDMENTS (2)
November 1, 2011**

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Average Salary	3 Year Average Salary	No Change
Eliminate Sick Leave Payout	Eliminate Sick Leave Payout	Eliminate Sick Leave Payout
Sick Leave Conversion	Sick Leave Conversion	Sick Leave Conversion
4th Level Survivor Death Benefit (Spouse & Children)	4th Level Survivor Death Benefit (Spouse & Children)	No Change
Post Retirement Survivor Allowance	Post Retirement Survivor Allowance	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
SJ Health and Dental Plan for Employee Only (50%)	SJ Health and Dental Plan (No Change)	No Change
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	Eliminate SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change; Additional 5% employee cost-share Fiscal 2012-13
Retiree Healthcare Pre-funding	Retiree Healthcare Pre-funding	Retiree Healthcare Pre-funding

November 11, 2011


Robert Sapien, Jr.
President
San Jose Firefighters, IAFF Local 230


George Beattie
President
San Jose Police Officers Association



San Jose Police Officers and Fire Fighters

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SAN JOSE POLICE OFFICERS ASSOCIATION AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230 RETIREMENT REFORM PROPOSAL ADDENDUM

1. From July 1, 2012 to June 30, 2013, payments from employees represented by San Jose Police Officers Association (SJPOA) and San Jose Fire Fighters, IAFF Local 230 (SJFF) to Retirement Healthcare prefunding are set forth in Table 1 below. We propose that these payments be suspended.
2. Instead, in fiscal year 2012-2013, employees will increase contributions to the pension fund by 5% to offset City costs. *
3. This resulting City savings for fiscal year 2012-2013 will be applied to each respective department's budgets in order to preserve critical life safety services.
4. After June 30, 2013, employee contributions to Retirement Healthcare will resume and increase as indicated in Table 2 below:

Table 1: SJFF MOA Article 29 - SJPOA MOA Article 50

Current Schedule	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Police	1%	1.98%	3.23%	4.48%	5.73%	TBN
Fire			1.25%	2.5%	3.75%	5%

Table 2: One year contribution diversion from retirement healthcare prefunding with increased employee contribution for preservation of vital public safety services in FY 1012-13.

Proposed Schedule	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Police	1%	1.98%	3.23%	5%*	5.73%	TBN
Fire	--	--	1.25%	5%*	5%	5%

From July 1, 2012 to 2013, the City may suspend contributions to Retiree Healthcare and apply savings proportionately to Police and Fire Department budgets. Payments in the following year (2013-14) will resume at a rate not greater 1.35% higher than the previous scheduled year rate.

Service Impacts: This proposal is estimated to provide 3.5 million dollars for the Fire Department and 5.8 million dollars for the Police Department. This is 9.3

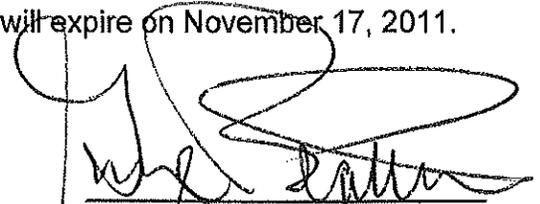
million dollars available in employee contributions to preserve vital public safety services.

This addendum to the attached proposal will expire on November 17, 2011.

November 11, 2011



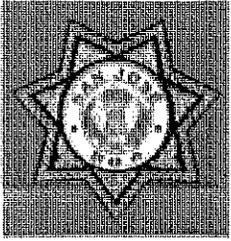
Robert Sapien, Jr., President
San Jose Firefighters, IAFF Local 230



George Beattie, President
San Jose Police Officers Association

POA AND IAFF, LOCAL 230
AMENDED PROPOSAL RECEIVED OCTOBER 31, 2011

- With respect to the Fire/POA sick leave proposal, if any law is enacted (via legislation, ballot proposition, or the like) that negatively affects (from a financial perspective) the conversion of sick leave to service credit under this proposal, then the sick leave elements of this proposal will be nullified and the parties will return to the status quo as it existed on September 15, 2011 (i.e., with the City invoking its right to meet and confer with both Fire and POA about the sick leave cash out).



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AMENDMENTS (1) October 24, 2011

These proposals amend the proposal submitted by San Jose Police Officers Association and San Jose Firefighters, IAFF Local 230 on September 28, 2011 for retirement reform.

These amendments are in summary form of the issue and will need to be fully vetted and agreed to by both the City and Unions with the cooperative spirit necessary to find common ground on the issues.

I. WORKERS COMPENSATION REFORM

THE LABOR-MANAGEMENT WORKERS' COMPENSATION SUPPLEMENTAL DISPUTE RESOLUTION AGREEMENT "LONG BEACH MODEL" SHALL APPLY TO ALL THREE (3) TIERS. TIERS I, TIER II, AND TIER III EMPLOYEES.

This Agreement is pursued pursuant to California Labor Code Section 3201.7(a)(3)(c). Nothing in this agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by the employer as otherwise provided in Division 4 of the Labor Code. Nothing in this agreement denies to any employee the right to representation by counsel at all stages during the alternative dispute resolution process.

Purpose.

The purposes of this proposal are:

1. To provide active employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement to facilitate their prompt return to work;
2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") section 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement;
3. To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers' compensation; and
4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs to the City.

These purposes will be achieved by utilizing an exclusive list of medical providers to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(c).

II. CalPERS VALUATION "UNIONS WILL BEAR THE EXPENSE"

CalPERS has advised the both the City and its public safety Unions that it charges \$700 (seven hundred dollars) to perform a valuation on the proposal submitted by San Jose Police Officers Association and San Jose Firefighters, IAFF Local 230.

CalPERS has also advised that by performing a valuation on the proposal it in NO-WAY commits either the City or safety Unions to enter into an agreement for CalPERS to administer retirement benefits as per the proposal.

San Jose Police Officers Association and San Jose Firefighters, IAFF Local 230 agree to pay the full cost of \$700 (seven hundred dollars) so that CalPERS can engage with retirement services and acquire the necessary demographic information to perform a complete valuation of the Unions proposal.

The Unions acknowledge that this valuation will take up to 120 days for a turn-around performance of the results from CalPERS.

Purpose.

There are a difference of opinion on the value of the savings based upon the Unions proposal for legal retirement reform between the City's retained actuary and the Unions retained actuary. Allowing CalPERS actually perform the valuation without commitment of entering into agreement will settle all issues as to the savings potential on retirement reform that the Unions proposal will or will not accomplish. Simply put, the savings will be verified.

This information is crucial so that all information can be shared and on the table for debate and deliberation as we all seek to reduce retirement costs in the most efficient and legal manner.

III. SUPPLEMENTAL RETIREMENT RESERVE BENEFIT (SRBR)

The Unions understand that the City has entered into agreements on changing SRBR benefits with other bargaining units for current entitled employees. The SJPOA and Local 230 need to understand the legal opinion and process which enables the City to move forward on changes to SRBR. Once understood the unions can better engage in the bargaining process on changes to SRBR for Tier I employees.

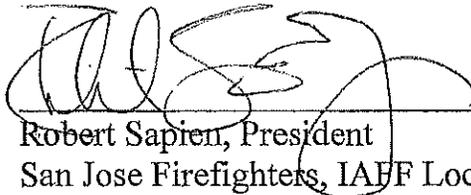
The Unions renew its proposal for all three Tiers of employees.

- Tier III employees will not be a participant or recipient of SRBR.
- Tier II employees will forfeit SRBR payments and participation upon voluntarily electing into Tier II. Furthermore, as additional savings, the assets forfeited by Tier II employees shall be rolled into the retiree medical plan to offset unfunded liabilities.
- Tier I employees will be subject to the outcome of bargaining between the City and Unions.

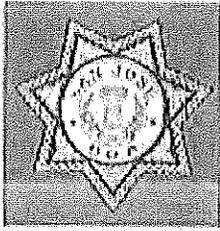
October 24, 2011



George Beattie, President
San Jose Police Officers Association



Robert Sapien, President
San Jose Firefighters, IAFF Local 230



San Jose Police Officers and Fire Fighters



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SAN JOSE POLICE OFFICERS ASSOCIATION AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230 RETIREMENT REFORM PROPOSAL

TIER III: RETIREMENT BENEFITS FOR NEW EMPLOYEES

I. Pension Formula 2.0% @ 50 for Local Safety Members CALPERS Section 21362

The pension benefit for eligible employees hired on or after July 1, 2012, shall be administered by CalPERS and be entered into their Section 21362 2% @ 50 Full Formula. This formula provides to local safety members 2% of pay at age 50 for each year of service credited with that employer. The percent per year of service gradually increases for each age attained from 2% at age 50 to 2.7% at age 55+. Local safety members subject to the 2% @ 50 Full Formula contribute 9% of reportable earnings.

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 2% @ 50 formula cannot exceed 90% of final compensation.

II. Annual Cost of Living Allowance Increase - COLA Section 21335

Allowances for retired members are currently covered by an annual 2.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 2.0%.

For example: COLA for retired members shall be based on an annual Consumer Price Index (CPI) factor with a 2.0% maximum cost-of-living increase, whichever is lower.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife

who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

- a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
- b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Improved Industrial Disability Allowance for Local Safety Members Section 21430

If the Workers' Compensation Appeals Board permanent disability rating percentage is greater than 50%, the same percentage (up to a maximum of 90%) will be used as the percentage of final compensation to calculate the CalPERS industrial disability

retirement allowance. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VII. Credit Unused Sick Leave to Service Credit Section 20965

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

VIII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute an additional 1.0% toward retirement contribution to lower the cost of the City's pension payments. This additional 1.0% shall be credited to each member's normal cost, for a maximum of 10.0% employee contribution towards pension normal cost.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
4. Some of the optional benefits available, such as 1959 Survivor Benefits

and Post-Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.

5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

IX. Military Service Credit 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999-2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

X. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but

an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires who are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children; or three or more eligible children only	\$2,280
Spouse or domestic partner with one eligible child; or two eligible children only ...	\$1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older; or dependent parents	\$950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term Insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XII. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21647.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XIII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER III retirement plan.

XIV. Retiree Health Care

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost premium for a non-deductible medical insurance plan, single coverage. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

X. Disability Retirees Health Care

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical insurance plan regardless of years of service.

XI. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

XII. Retiree Dental Insurance

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible dental insurance plan. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards a single non deductible dental insurance plan regardless of years of service.

XIII. Surviving Dependents - Employee killed in the line of duty

Surviving dependents of an employee killed in the line of duty, shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical and dental insurance plan.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

TIER II: VOLUNTARY RETIREMENT BENEFITS ELECTION FOR CURRENT EMPLOYEES

On or before March 1, 2012 active employees shall make a voluntary irrevocable decision to have CalPERS administer their pension benefits beginning July 1, 2012. Any employee hired between March 1, 2012 and June 30, 2012 shall have TIER II pension benefits.

I. Pension Formula 3.0% @ 55 For Local Safety Members Section 21363.1

This formula provides to local safety members 3% of pay at age 55 for each year of service credited with that employer. For members who retire earlier, the percentage of pay is reduced to 2.400% at age 50, which gradually increases for each attained age to 3% at age 55+. Local safety members subject to the 3% @ 55 Full or Supplemental formulas contribute 9% of reportable earnings. Those covered under the 3% @ 55 Modified formula (coordinated with Social Security) contribute 9% of reportable earnings in excess of \$133.33. (A formula change affecting the members' contribution rate requires an election of the affected members.)

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 3% @ 55 formula cannot exceed 90% of final compensation.

II. Cost of Living Allowance - COLA Section 21335

Allowances for retired members of the TIER II retirement plan shall be an annual 3.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 3.0%.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means

for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

- a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
- b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Improved Industrial Disability Allowance for Local Safety Members Section 21430

If the Workers' Compensation Appeals Board permanent disability rating percentage is greater than 50%, the same percentage (up to a maximum of 90%) will be used as the percentage of final compensation to calculate the CalPERS industrial disability retirement allowance. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VII. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

VIII. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

XIV. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute 1% additional retirement contribution to the cost of pension payments. A max of 10% of employee contributions towards pension.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

3. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
4. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

6. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
7. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
8. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
9. Some of the optional benefits available, such as 1959 Survivor Benefits and Post-Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
10. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

X. Military Service Credit Section 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999-2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

XI. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires who are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children; or three or more eligible children only	\$2,280
Spouse or domestic partner with one eligible child; or two eligible children only ...	\$1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older; or dependent parents	\$950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XII. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XVIII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER II retirement plan. All members who voluntarily irrevocably move into the TIER II retirement plan shall forfeit all rights to any future SRBR earnings and or payments.

XIII. Retiree Health and Dental Care

All TIER II participants shall receive all Retiree Health and Dental Insurance benefits as TIER I members.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

XV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

TIER I: RETIREMENT BENEFITS FOR CURRENT EMPLOYEES

Current Retirement Benefits in effect for both SJPOA and IAFF Local 230 members respectively shall remain status-quo but for the following provision changes.

I. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

II. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report to Retirement Services only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage of retirement allowable.

The City of San Jose shall direct retirement services to perform and add into the valuation the value of this benefit. The City of San Jose shall be 100% responsible for the normal cost determined by this valuation. Estimated impact on normal cost to be 0.1%-0.2% of payroll for both groups.

III. Supplemental Retiree Benefit Reserve

The San Jose Police Officers Association and San Jose Firefighters, IAFF Local 230 agree to discuss and determine legal and equitable ways to address the Supplemental Retiree Benefit Reserve (SRBR) program in the Police and Fire Department Retirement Plan.

Either the City or the Unions, 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.

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 City Charter section 1111.

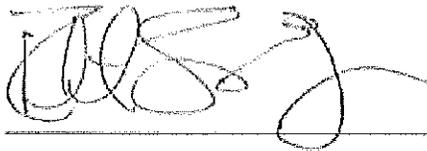
IV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to prefund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

V. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

September 27, 2011



Robert Sapien, Jr.
President
San Jose Firefighters, IAFF Local 230



George Beattie
President
San Jose Police Officers Association

EXHIBIT E

SENT VIA EMAIL

October 28, 2011

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

Robert Sapien
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Retirement Negotiations

Dear George and Robert:

This letter confirms that, based on our discussion during the negotiation session held this afternoon, and pursuant to the Framework for Retirement Reform And Related Ballot Measure Negotiations, the parties will participate in mediation. The mediation will commence on November 4, 2011, at 1:30 p.m., in City Hall Tower, Room 1734. Mr. Paul Roose from the State Mediation and Conciliation Service will serve as the mediator.

Sincerely,



Alex Gurza
Director of Employee Relations

c: Paul Roose, State Mediation and Conciliation Service
Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, Vice President, POA
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Jeff Welch, Vice President, San Jose Fire Fighters, IAFF, Local 230
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

EXHIBIT F



PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO
An Organization of Professional, Technical, and Administrative Employees

December 5, 2011

Honorable Mayor and City Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

RE: Consideration of Action on a Ballot Measure on Pension Reform
Item 3.4

Dear Mayor and Council,

IFPTE Local 21 is supportive of many elements contained within the memorandum written by Councilmembers Rocha and Pyle. We are certainly interested in continuing mediation as was written in the editorial pages of the Mercury News today.

As such, we wanted to assure you that we are understanding of your desire to place a pension reform measure before the voters in June and not have any undue delay in that respective timeline. To ensure that does not happen we are providing you with the following commitment:

IFPTE Local 21 waives additional impasses procedures that would inhibit our ability to continue mediation and work toward a negotiated agreement on retirement reform and related ballot measure. Specifically we would waive any right to utilize AB 646 as part of these continuing negotiations and we understand that a June 2012 election would require any agreement to be voted on in the form of a ballot measure by the city council 88 days prior to said June 2012 election.

A negotiated agreement is the best solution to enact lawful pension reform that will improve our collective ability to provide quality services to San Jose residents.

Sincerely,

Nancy J. Ostrowski
IFPTE Local 21 Senior Staff
Chair of the San Jose Coalition

Cc: AEA Bargaining Team
AMSP Bargaining Team
OAMP Bargaining Team
Christopher Platten, Esq.
Alex Gurza

EXHIBIT G



CITY COUNCIL AGENDA

DECEMBER 6, 2011

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
XAVIER E. CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED, MAYOR

PIERLUIGI OLIVERIO
MADISON NGUYEN, VICE MAYOR
ROSE HERRERA
DONALD ROCHA
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

City Manager Debra Figone congratulated City employees for raising \$110,000 through the 2011 Combined Charitable Giving Campaign, including those employees who donated 1,452 hours to the social service and non profit agencies who participating in this year's campaign by dedicating their time to volunteerism.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9:00 a.m.

Accepted.

3.3 Declaration of Fiscal and Service Level Emergency.

Recommendation:

- (a) Accept the attached City of San José Fiscal & Service Level Emergency Report.
- (b) Adopt a Resolution declaring a Fiscal and Service Level Emergency based on the City of San José Fiscal & Service Level Emergency Report, including the findings set forth in the Resolution.

(Mayor)

Dropped to be renoticed; Deferred to 2012.

3.4 Consideration of Action on a Ballot Measure on Pension Reform.

Recommendation:

- (a) Discussion and consideration of a Retirement Reform ballot measure for a March 6, 2012 election.
- (b) If Council wishes to proceed, adopt a resolution of the Council calling a special municipal election to be held on March 6, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San José, the following measure at that election:

To maintain essential City services, shall the Charter be amended to reform retirement benefits of City employees and retirees by, among others: (1) increasing current employees' contributions; (2) establishing a voluntary reduced pension plan for current employees; (3) establishing pension cost and benefit limitations for new employees; (4) limiting disability retirements; (5) temporarily suspending retiree Cost of Living adjustments; and (6) requiring voter approval to increase future pension benefits?

- (c) Council discussion and consideration of permitting rebuttal arguments in the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election

(Action continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.4 Consideration of Action on a Ballot Measure on Pension Reform. (*Action Cont'd.*)

- (d) Council discussion and consideration of a resolution authorizing an individual member or members of the City Council to submit an argument in favor of the City measure on the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election.

(Mayor)

The revised memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Constant, Herrera and Liccardo, dated December 1, 2011, was approved:

- (1) Consideration of the declaration of a Fiscal and Service Level Emergency until after Cheiron has provided an update of their five year projections and other questions have been answered was deferred.
- (2) Resolution No. 76087 was adopted calling a Municipal election on June 5, 2012 and giving notice of the submission to the electors of the City of San José, the following measure at that election, modified as follows:
 - (a) **PENSION REFORM.** To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees, reforming disability retirements to prevent abuses, temporarily suspending retiree COLAs (Cost of Living Adjustments) during *emergencies* and requiring voter approval for increases in future pension benefits.
- (3) The Mayor was authorized to prepare and submit an argument in favor of the City Measure on the June 5, 2012 Voter's Sample Ballot.
- (4) Council Members were authorized to prepare, submit and/or sign "in favor of" and "in opposition to" ballot arguments and rebuttals on the June 5, 2012 Voter's Sample Ballot.

The supplemental memorandum from Mayor Reed, dated December 5, 2011, was approved:

- (1) The proposed ballot measure language with the changes noted in the attached draft was approved.
- (2) Staff directed to delay transmitting the ballot measure resolution and related documents to the registrar to allow time for continued mediation, if requested by the bargaining units.
- (3) Staff directed to invite all bargaining units to waive all other impasse procedures and engage in mediation over the ballot measure and other retirement issues with two separate mediations, one for Police and Fire and one for all bargaining units representing employees in the Federated City Employees' Retirement System.

Noes: Campos, Chu, Kalra, Pyle, Rocha.

- (1) Information related to fees, costs and financial risks will be discussed in Closed Session first and the Council will vote on what is released to the public.

Noes: Campos, Chu, Kalra, Pyle.

EXHIBIT H

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REPEALING RESOLUTION NO. 76087 AND CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 5, 2012, A BALLOT MEASURE PROPOSAL TO AMEND THE SAN JOSE CITY CHARTER TO ADD A NEW ARTICLE XV-A TO REFORM CITY PENSIONS AND BENEFITS PROVIDED TO CURRENT EMPLOYEES AND ESTABLISH REDUCED PENSIONS AND BENEFITS FOR NEW EMPLOYEES AND TO PLACE OTHER LIMITATIONS ON PENSIONS AND BENEFITS

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council adopted Resolution No. 76087 and approved a ballot measure for the June 5, 2012 election but directed the City Clerk not to submit the ballot measure to the Registrar of Voters to allow time for further negotiations on the ballot measure language; and

WHEREAS, the City Council now desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees, to establish reduced pensions and benefits for new employees and to place other limitations on pensions and benefits; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Resolution No. 76087 is hereby repealed.

SECTION 2. A Special Municipal Election is hereby called and ordered to be held in the City of San José on June 5, 2012, for the purpose of voting on a ballot measure to amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees and to establish different pensions and benefits for new employees and to place other limitations on pensions and benefits. The proposed City Charter amendment is attached to this Resolution as Exhibit A.

SECTION 3. The ballot measure will be placed on the ballot for the June 5, 2012 election in the following form:

PENSION REFORM

To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions; establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees; reforming disability retirements to prevent abuses; temporarily suspending retiree COLAs during emergencies; and requiring voter approval for increases in future pension benefits?

YES	
NO	

SECTION 4. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 5. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on June 5, 2012 with any other election that may be held on that date.

SECTION 6. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 7. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 8. The City Council hereby directs the City Clerk to take all actions necessary to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 9. Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) transmit a copy of the Measure to the City Attorney and cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk/elections/Election.asp or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 10. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of arguments for and against the ballot measure, if any, and authorizes the Mayor to author and submit a ballot measure argument in favor of the ballot measure and also approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.

SECTION 11. The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

ADOPTED this 6th day of March, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

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EXHIBIT A

ARTICLE XV-A RETIREMENT

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:
"The Sustainable Retirement Benefits and Compensation Act."

Section 1501-A: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 1502-A: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

Section 1503-A. Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

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Section 1504-A. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 1505-A. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

Section 1506-A. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement

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contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

**Section 1507-A: One Time Voluntary Election Program
("VEP")**

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The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.

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- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

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- (vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.
- (d) VEP Survivorship Benefits.
 - (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
 - (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.
- (e) VEP Disability Retirement Benefits.

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- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 1508-A: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

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(a) The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City’s cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City’s share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees’ Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, “final compensation” shall mean the average annual earned pay of the highest three

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consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 1509-A: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of

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qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

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(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 1510-A: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current

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Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 1511-A: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 1512-A: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)

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(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

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- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs:

- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
 - (i) the funding objectives and actuarial assumptions of the plans; and
 - (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 1514-A: Savings

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

Section 1515-A: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or

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unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

EXHIBIT I



July 20, 2011

VIA ELECTRONIC MAIL

Mr. Russell Crosby
Director of Retirement Services
Federated City Employees' Retirement System
1737 North 1st Street, Suite 580
San Jose, CA 95112

Re: 5-Year Budget Projections

Dear Russell:

As requested for purposes of City budget projections, we projected the contributions expected to be required of the City of San Jose to the City of San Jose Federated Employees' Retirement System (Federated Pension), the Federated Retiree Health Care Plan (Federated OPEB), the Police and Fire Department Retirement Plan (Police & Fire Pension) and the Police and Fire Department Medical and Dental Insurance Plan (Police & Fire OPEB) for the next five years. The table below summarizes the projected contributions assuming City contributions are made throughout the fiscal year.

City of San Jose Projected City Contributions					
FYE	Federated		Police & Fire		Total
	Pension	OPEB	Pension	OPEB	
2012	90,291,000	22,810,000	132,016,000	17,638,000	262,755,000
2013	108,724,000	26,165,000	166,443,000	22,071,000	323,403,000
2014	123,362,000	37,608,000	192,601,000	26,849,000	380,420,000
2015	134,287,000	39,868,000	211,211,000	30,765,000	416,131,000
2016	138,127,000	41,432,000	218,350,000	33,626,000	431,535,000

These projections are based on the June 30, 2010 actuarial valuations for the Plans, and assume that all assumptions, including payroll growth assumptions, in those valuations are met in the future except as specifically noted. Please refer to those reports for a description of the plan provisions, a summary of the data, and a summary of the methods and assumptions used in each of the valuations.

For the Federated Plans, we assume that the discount rate and wage growth assumptions are reduced to 7.75% and 3.83% respectively as of June 30, 2011 as adopted by the Board in conjunction with the June 30, 2010 actuarial valuation. For the Police and Fire Plans, we assumed the discount rate is reduced to 7.5% effective with the June 30, 2011 actuarial valuation per your instructions, but the payroll growth assumption remains at 4.25%.



The June 30, 2010 actuarial valuations for the Police and Fire Pension and OPEB Plans were performed by the Segal Company. We relied on the results of these valuations as reported by Segal and their November 24, 2010 letter illustrating the impact of different discount rates on the contribution rates for the Police and Fire Pension Plans. We note that Segal illustrated the contribution for 2011-12 based on projected payroll for 2010-11. These projections use Segal's projected payroll for 2011-12 as the basis for the projection. In addition, the MOUs for the Police and Fire OPEB Plans indicate that if the City's contribution rate is greater than 11% of pay after the phase-in period, the parties should meet and confer. Consequently, for these projections, the City's contribution rate to the Police OPEB Plan was limited to a maximum of 11% of pay after the phase-in period. The Fire OPEB Plan just reaches the end of the phase-in period in the last year of the projection.

These projections are highly dependent on the projected payroll for each of the Plans. The table below summarizes the projected payroll on which these projections were based.

City of San Jose Projected Payroll			
FYE	Federated	Police & Fire	Total
2012	318,579,000	261,728,000	580,307,000
2013	330,781,000	272,852,000	603,633,000
2014	343,450,000	284,448,000	627,898,000
2015	356,604,000	296,537,000	653,141,000
2016	370,262,000	309,140,000	679,402,000

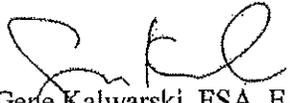
Also as requested, we have attached 20-year projections of payroll and City pension contributions.

We hereby certify that, to the best of our knowledge, this report and its contents, which are work products of Cheiron, Inc., are complete and accurate and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this report. This report does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice.

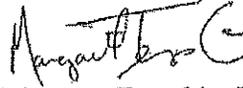
Mr. Russell Crosby
July 20, 2011
Page 3

These projections were prepared exclusively for the City of San Jose for the purpose of budget projections. These projections are not intended to benefit any third party. If you have any questions about this analysis, please let us know.

Sincerely,
Cheiron



Gert Kalwarski, FSA, EA, MAAA
Principal Consulting Actuary



Margaret Tempkin, FSA, EA, MAAA
Consulting Actuary

cc: Mike Moehle
Carmen Racy-Choy
Ken Kent
Anne Harper
David Holland

**CITY OF SAN JOSE
20-YEAR PROJECTED PENSION CONTRIBUTIONS**

City of San Jose Projected Payroll			
FYE	Federated	Police & Fire	Total
2012	318,579,000	261,728,000	580,307,000
2013	330,781,000	272,852,000	603,633,000
2014	343,450,000	284,448,000	627,898,000
2015	356,604,000	296,537,000	653,141,000
2016	370,262,000	309,140,000	679,402,000
2017	384,443,000	322,278,000	706,721,000
2018	399,167,000	335,975,000	735,142,000
2019	414,455,000	350,254,000	764,709,000
2020	430,328,000	365,140,000	795,468,000
2021	446,810,000	380,658,000	827,468,000
2022	463,923,000	396,836,000	860,759,000
2023	481,691,000	413,702,000	895,393,000
2024	500,140,000	431,284,000	931,424,000
2025	519,295,000	449,614,000	968,909,000
2026	539,184,000	468,723,000	1,007,907,000
2027	559,835,000	488,643,000	1,048,478,000
2028	581,277,000	509,411,000	1,090,688,000
2029	603,540,000	531,061,000	1,134,601,000
2030	626,655,000	553,631,000	1,180,286,000
2031	650,656,000	577,160,000	1,227,816,000

**CITY OF SAN JOSE
20-YEAR PROJECTED PENSION CONTRIBUTIONS**

City of San Jose Projected City Pension Contributions			
FYE	Federated	Police & Fire	Total
2012	90,291,000	132,016,000	222,307,000
2013	108,724,000	166,443,000	275,167,000
2014	123,362,000	192,601,000	315,963,000
2015	134,287,000	211,211,000	345,498,000
2016	138,127,000	218,350,000	356,477,000
2017	143,058,000	227,476,000	370,534,000
2018	148,242,000	237,131,000	385,373,000
2019	153,622,000	247,728,000	401,350,000
2020	159,197,000	258,300,000	417,497,000
2021	164,976,000	269,282,000	434,258,000
2022	170,965,000	280,727,000	451,692,000
2023	177,172,000	278,480,000	455,652,000
2024	183,605,000	289,086,000	472,691,000
2025	190,272,000	313,636,000	503,908,000
2026	197,182,000	327,993,000	525,175,000
2027	204,343,000	278,103,000	482,446,000
2028	211,766,000	241,362,000	453,128,000
2029	219,458,000	196,290,000	415,748,000
2030	227,431,000	164,793,000	392,224,000
2031	235,694,000	149,288,000	384,982,000

CERTIFICATE OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 6, 2012, I served the following documents(s) by the method indicated below:

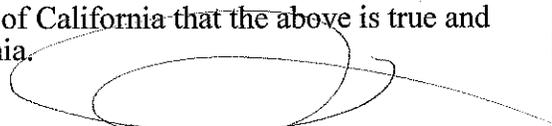
**DECLARATION OF ALEX GURZA IN OPPOSITION TO
SAN JOSE POLICE OFFICERS' ASSOCIATION'S APPLICATION
FOR LEAVE TO SUE IN QUO WARRANTO**

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by electronic transmission via e-mail attachment (agreed by the parties served in this matter)

Gregg McLean Adam, SBN 203436
Jonathan Yank, SBN 215495
Jennifer S. Stoughton, SBN 238309
CARROLL, BURDICK & McDONOUGH LLP
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jstoughton@cbmlaw.com

Attorneys for Petitioner SAN JOSE POLICE
OFFICERS' ASSOCIATION

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 6, 2012, at San Francisco, California.



Rochelle Redmayne