COUNCIL AGENDA: 05-31-11
ITEM: 3.A

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: May 17, 2011

Approved

Date 5/17/11

SUBJECT: APPROVAL OF IMPLEMENTATION OF TERMS CONTAINED IN THE CITY'S LAST, BEST, AND FINAL OFFER TO THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 3 (OE#3)

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

RECOMMENDATION

Adoption of a resolution approving the implementation of terms contained in the City's Last, Best, and Final Offer for employees represented by the International Union of Operating Engineers Local Union No. 3 (OE#3), effective June 26, 2011.

OUTCOME

Adoption of the resolution and authorization to implement terms contained in the City's Last, Best, and Final Offer for employees represented by OE#3, effective June 26, 2011. Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

BACKGROUND

In November 2010, the City Council in open session approved a goal of reducing the total ongoing employee compensation for all City employees by ten percent (10%). "Total compensation" is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance and other benefits. Total compensation is calculated using budgeted salary and fringe benefit costs for the bargaining unit.

In addition to the 10% ongoing total compensation reduction approved in November 2010, the City Council approved direction to achieve the following reforms: retirement reform, including 2nd tier pension and retiree healthcare benefits for new hires; options for current employees; SRBR or "13th Check;" sick leave payout; disability leave supplement, overtime calculation, vacation sellback and compensation structure.

The City of San Jose has a labor contract with the International Union of Operating Engineers Local Union No. 3 (OE#3), which expires on June 30, 2011. OE#3 currently represents approximately 690 positions as included in the 2011-2012 Proposed Operating Budget. This unit includes employees such as Maintenance Assistants, Park Rangers and Parking and Traffic Control Officers.

The negotiations with OE#3 commenced in February 2011, and the parties met approximately fourteen (14) times. The parties reached impasse and engaged in the mediation process on May 4, 2011, and May 11, 2011. Unfortunately, despite these efforts, the parties were unable to reach an agreement.

On May 12, 2011, the City provided OE#3 with alternate Last, Best, and Final offers, which included a one-year or two-year proposed term of agreement with slightly different terms. The City requested that OE#3 provide a response by May 24, 2011. If an agreement is reached with OE#3, a Supplemental Memorandum will be issued.

Pursuant to the Meyers-Milias-Brown Act under California Government Code Section 3505.4, if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding.

OE#3 has been notified that this item was being placed on the Council Agenda for implementation of terms contained in the one-year City's Last, Best, and Final offer for employees represented by OE#3, which is attached. However, it is important to note that the imposition of terms does not include the imposition of any side letters.

ANALYSIS

The following is a summary of the terms contained in the City's Last, Best, and Final Offer that would be implemented for employees represented by OE#3:

Base Pay Reduction – Ongoing

Effective at the beginning of the payperiod during which the current contract expires (June 26, 2011), all salary ranges for employees represented by OE#3 shall be decreased by approximately 10.0%. All employees represented by OE#3 shall receive a 10.0% base pay reduction.

Effective June 25, 2011, the City will cease one-time and ongoing additional employee retirement contributions that offset the City's retirement contribution rates and stop one-time base rate concessions made in Fiscal Year 2010-2011.

Healthcare Cost Sharing

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

Effective pay date July 1, 2011, the City will pay eighty-five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

Healthcare HMO Plan Design

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

Effective pay date July 1, 2011, a $25 co-pay plan shall be implemented for all HMO plans, including the following changes:

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

Healthcare Payment-In-Lieu

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

	Health-In-Lieu	Dental-In-Lieu
If eligible for family coverage:	$272.74	$23.75
If NOT eligible for family coverage:	$109.54	$23.75

Effective pay date July 1, 2011, employees who qualify for and participate in payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

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

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

Healthcare Dual Coverage

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

Disability Leave

Effective at the beginning of the payperiod during which the current contract expires (June 26, 2011), reduce the maximum disability supplemental pay benefit from nine (9) calendar months to three (3) calendar months (520 hours).

	Employees will be allowed to integrate accrued vacation, earned compensatory time, and accrued sick leave.
Salary Step Structure	Effective at the beginning of the payperiod during which the current contract expires (June 26, 2011), salary steps for all classifications represented by OE#3 will change from approximately 5% to approximately 2.5% between each step. This will increase the number of steps in each pay range.
Overtime	Employees who work in excess of 40 hours per week shall be compensated at the rate of time and one-half (1.5) the employee's hourly rate. Paid time off will no longer be considered time worked for the purposes of calculating eligibility for overtime.
Subsidy for Public Transit	After calendar year 2011, the City will no longer provide employees with an ECO-Pass. Upon exhaustion of the current supply of Commuter Check Vouchers, Vouchers will no longer be available for purchase from the City.
Sick Leave Payout	Effective January 1, 2012, no employee shall be eligible for a sick leave payout.

Side Letters

The City's one-year Last, Best, and Final offer included several side letters to meet and confer, to the extent that any change is a mandatory subject of bargaining, in the areas of Retirement Reform for current and future employees, including but not limited to healthcare benefits; the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System; and the City's layoff process and procedure, during the term of the proposed agreement.

The imposition of terms does not include the imposition of any side letters. However, absent an MOA containing a "zipper clause" the City or OE#3 may notify the other of its intent to meet and confer on any matters during Fiscal Year 2011-2012, to the extent that any change is a mandatory subject of bargaining. Pursuant to the Meyers-Milias-Brown Act under California Government Code Section 3505, the parties have the mutual obligation to meet and confer promptly upon request by either party, and to endeavor to reach agreement on matters within the scope of representation. This obligation includes all mandatory subjects of bargaining, inclusive of the change in terms included in this memo for Fiscal Year 2011-2012. If the parties are unable to reach an agreement on any of the issues, the parties shall follow the impasse procedures under Employee-Employer Relations Resolution No. 39367.

EVALUATION AND FOLLOW-UP

None.

PUBLIC OUTREACH/INTEREST

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

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

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

This item meets Criterion 1. This memorandum will be posted on the City's website for the May 31, 2011, Council Agenda.

COORDINATION

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

COST IMPLICATIONS

For Fiscal Year 2010-2011, OE#3 agreed to concessions that achieved a 10% total compensation reduction, 5% ongoing and 5% one-time. These concessions included ongoing and one-time additional retirement contributions to offset the City's retirement costs and a base pay reduction. Effective June 25, 2011, the concessions agreed to in Fiscal Year 2010-2011 will cease and will be replaced with the terms described in this memorandum.

As directed in the Mayor's March 2011 Budget Message, as approved by the City Council, the budgetary savings associated with this action are assumed in the 2011-2012 Proposed Operating Budget which was released on May 2, 2011, as well as the 2011-2012 Proposed Fees and Charges document released on May 7, 2011. The terms which make the 5% one-time total compensation reduction ongoing, generate an additional ongoing savings of approximately $3.73 million in all funds and approximately $1.11 million in the General Fund based on the positions included in the 2011-2012 Proposed Operating Budget. These savings do not assume any adjustments necessary to maintain the annual required retirement contributions and the associated change in overhead reimbursements to the General Fund from other funds. These savings also do not include the currently unknown cost increases for healthcare for the second half of Fiscal Year 2011-2012.

CEQA

CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions.

Alex Gurza
Director of Employee Relations

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

Attachment

CITY OF SAN JOSE AND OE#3
LAST, BEST, AND FINAL OFFER
ALTERNATIVE A

PERIOD OF MEMORANDUM OF AGREEMENT

July 1, 2011 – June 30, 2012 (See attached)

WAGES

See attached

HEALTHCARE COST SHARING

See attached

HEALTHCARE CO-PAYS

See attached

HEALTH AND DENTAL IN LIEU

See attached

HEALTHCARE DUAL COVERAGE

See attached

SICK LEAVE PAYOUT

See attached

DISABILITY LEAVE SUPPLEMENT

See attached

SALARY STEP STRUCTURE

See attached

OVERTIME CALCULATION

See attached

SUBSIDY FOR PUBLIC TRANSIT

See attached

SIDE LETTERS

- Retirement Benefits for current and new employees (See attached)
- Layoff (See attached)
- Supplemental Retiree Benefit Reserve (SRBR) (See attached)

PERIOD OF MEMORANDUM OF AGREEMENT

Proposed Language:

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

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

It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

This language is intended to replace the language in Article 1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – WAGES

Proposed Language:

5.1 Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to OE#3 (Union Code 06/061) shall be decreased by approximately 10%. This will result in the top and bottom of the range of all classifications represented by OE#3 being 10% lower. All employees will receive a 10% base pay reduction.

This language is intended to replace the language in Article 5.1 of the OE#3 Memorandum of Agreement

Note:

The City will "undo" one-time and ongoing additional employee retirement contributions that offset the City's retirement contribution rates and stop "one-time" base rate concessions made in Fiscal Year 2010-2011 effective June 25, 2011.

CITY PROPOSAL – HEALTHCARE COST SHARING

Proposed Language:

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

This language is intended to replace the language in Article 5.5.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE CO-PAYS

Proposed Language:

5.5.2 Effective pay date July 1, 2011, a $25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

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

This language is intended to replace the language in Article 5.5.2 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTH AND DENTAL IN LIEU

Proposed Language:

5.7.1 Effective pay date July 1, 2011, employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following per pay period:

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

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

This language is intended to replace the language in Article 5.7.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE DUAL COVERAGE

Health Insurance Proposed Language:

5.5.4 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.5.4 of the OE#3 Memorandum of Agreement

Dental Insurance Proposed Language:

5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.6.3 of the OE#3 Memorandum of Agreement

CITY PROPOSAL - SICK LEAVE PAYOUT

Effective January 1, 2012, no employee shall be eligible for a sick leave payout.

With this proposal, Article 18.2 & 18.3 of the OE#3 Memorandum of Agreement shall be eliminated.

CITY PROPOSAL – DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).

19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.

19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:

1) an act of gross negligence of such employee;
2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.

19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:

1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
3) Effective June 26, 2011, an employee will be eligible to receive DLS for a maximum of three (3) months (or 520 hours if not continually absent) for any

current of future work-related injury or illness. Any employee who has exceeded three (3) months (or 520 hours if not continually absent) as of June 26, will no longer be eligible to receive DLS.~~Nine (9) calendar months (274 days) or 1560 hours, if not continually absent following date of injury.~~

19.6.1 Time Limit for DLS Eligibility. Effective June 26, 2011, after 520 hours of DLS~~After 1560 hours of DLS~~, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.

19.6.2 Suspension of Disability Leave Supplement. The City may suspend Disability Leave Supplement in lieu of or as part of a disciplinary suspension, demotion or pay reduction. The City shall proceed with due process requirement, unless the employee is non-ambulatory and is determined by a physician to be medically unable to participate. An employee who is unable to participate may send a representative in their absence.

19.7 Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.

19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources or designee is responsible for determining eligibility for DLS. In making this determination, the Director or designee, may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director or designee. The Director or designee may require the employee to submit to a medical examination by a physician selected by the City.

19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this article and the integration of Sick Leave, accrued vacation, and compensatory time off with Workers' Compensation provided for in Article 18.1.2.3 may be considered to have voluntarily separated from employment.

19.10 Integration. After the maximum time limit specified in Article 19.6, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.

- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

CITY PROPOSAL – SALARY STEP STRUCTURE

Proposed Language:

5.1.1 Salary Steps. Effective June 26, 2011, the salary steps for all classifications represented by OE#3 will change from approximately 5% between each step to approximately 2.5%. This will result in an increase in the number of steps in the pay range.

This language is intended to be added to Article 5.1 in the OE#3 Memorandum of Agreement

CITY PROPOSAL – OVERTIME CALCULATION

Proposed Language:

6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off shall not be considered time worked for the purpose of calculating eligibility for overtime.

6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.

6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Water Pollution Control Plant will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Water Pollution Control Plant and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.

This language is intended to replace the language in Articles 6.6, 6.6.1, & 6.6.2 of the OE#3 Memorandum of Agreement.

With this proposal, Article 6.11 shall be eliminated

PUBLIC TRANSIT SUBSIDY (ECO-PASS AND SUBSIDIZED COMMUTER CHECK VOUCHER PROGRAM)

ECO-Pass

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

Commuter Check Program

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

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

RETIREMENT REFORM

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or OE#3 may provide notice to the other of its request to continue to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or OE#3 receives notice from the other. The City and OE#3 shall continue to 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, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor agreement between the City and OE#3.

FOR THE CITY:

Jennifer Schembri Date
Office of Employee Relations

FOR OE#3:

Bill Pope Date
International Union of Operating Engineers, Local No. 3 (OE#3)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

LAYOFF

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) may provide notice to the other of its request to meet and confer on modifications to the City's layoff process and procedure, including the provisions of the Layoff article in the Memorandum of Agreement. Upon such notice, the parties shall meet within ten (10) calendar days after the City or OE#3 receives notice from the other. The City and OE#3 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, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

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

FOR THE CITY:

Jennifer Schembri Date
Office of Employee Relations

FOR OE#3:

Bill Pope Date
International Union of Operating Engineers, Local No. 3 (OE#3)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System.

Either the City or OE#3 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 OE#3 receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and OE#3 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, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

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

FOR THE CITY:

Jennifer Schembri Date
Office of Employee Relations

FOR OE#3:

Bill Pope Date
International Union of Operating Engineers, Local No. 3 (OE#3)