



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Gina Donnelly

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 ASSOCIATION OF LEGAL PROFESSIONALS OF SAN JOSE (ALP)

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 Association of Legal Professionals of San Jose (ALP), 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 ALP, 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.

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The City of San Jose has an agreement with the Association of Legal Professionals of San Jose (ALP), which expires on June 30, 2011. ALP currently represents approximately 31 positions as included in the 2011-2012 Proposed Operating Budget. This unit includes employees such as Senior Deputy City Attorney, Deputy City Attorney, Legal Services Manager, Senior Legal Analyst, and Associate Deputy City Attorney.

The negotiations with ALP commenced in January 2011, and the parties met approximately fourteen (14) times. The parties reached impasse and engaged in the mediation process on April 28, 2011, and April 29, 2011. Unfortunately, despite these efforts, the parties were unable to reach an agreement.

On May 12, 2011, the City provided ALP 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 ALP provide a response by May 24, 2011. If an agreement is reached with ALP, 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.

ALP 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 ALP, 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 ALP:

Base Pay Reduction – Ongoing Effective at the beginning of the payperiod during which the current agreement expires (June 26, 2011), all salary ranges for employees represented by ALP shall be decreased by approximately 5.39%. All employees represented by ALP shall receive a 5.39% base pay reduction.

Effective June 25, 2011, the mandatory unpaid furlough days program in the agreement for Fiscal Year 2010-2011 will cease. This means that employees represented by ALP will no longer be eligible for unpaid furlough days.

Disability Leave Effective at the beginning of the payperiod during which the current agreement expires (June 26, 2011), reduce the maximum disability supplemental pay benefit from six (6) calendar months to three (3) calendar months (520 hours).

Employees will be allowed to integrate accrued vacation and accrued sick leave.

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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.

Vacation Sellback Effective December 25, 2011, reduce vacation sellback eligibility from a maximum of 120 hours to a maximum of 60 hours. Employees must submit an irrevocable election form to Payroll on or before November 26, 2011, to be eligible to sell back accrued vacation in 2012.

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, and the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System, during the term of the proposed agreement.

The imposition of terms does not include the imposition of any side letters. However, absent an agreement containing a "zipper clause," the City or ALP 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-Miliias-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)**

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- 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.

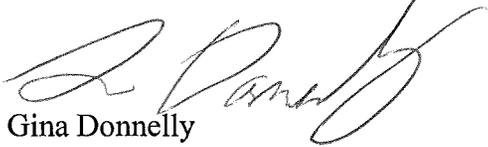
COST IMPLICATIONS

For Fiscal Year 2010-2011, ALP agreed to concessions that achieved a 10% total compensation reduction, 5% ongoing and 5% one-time. These concessions included ongoing and one-time base pay reductions, and mandatory unpaid furlough days for Fiscal Year 2010-2011. Effective June 25, 2011, the one-time 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 achieve a 10% ongoing total compensation reduction generate additional ongoing savings of approximately \$323,000 in all funds and approximately \$262,000 in the General Fund based on the positions included in the 2011-2012 Proposed Operating Budget. These savings do not include 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.


Gina Donnelly
Deputy Director of Employee Relations

For questions please contact Gina Donnelly, Deputy Director of Employee Relations, at (408) 535-8150.

Attachment

**CITY OF SAN JOSE AND ALP
LAST, BEST, AND FINAL OFFER
ALTERNATIVE A**

TERM

July 1, 2011 – June 30, 2012

WAGES

See attached

SICK LEAVE PAYOUT

See attached

VACATION SELLBACK

See attached

DISABILITY LEAVE SUPPLEMENT

See attached

SUBSIDY FOR PUBLIC TRANSIT

See attached

SIDE LETTERS

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

May 12, 2011

CITY PROPOSAL – WAGES

Proposed Language:

Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to ALP shall be decreased by approximately 4.75%. This will result in the top and bottom of the range of all classifications represented by ALP being 4.75% lower. All employees will receive a 4.75% base pay reduction.

Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to ALP shall be decreased approximately by an additional 5.39%. This will result in the top and bottom of the range of all classifications represented by ALP being an additional 5.39% lower. All employees will receive an additional 5.39% base pay reduction.

This language is intended to:

- *Replace the section entitled "Pay Reduction" in the ALP Tentative Agreement dated June 15, 2010, and delete the section entitled "Mandatory Unpaid Furlough Days" in the ALP Tentative Agreement dated June 15, 2010.*

CITY PROPOSAL – SICK LEAVE PAYOUT

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

CITY PROPOSAL – VACATION SELLBACK

Proposed Language:

ALP represented employees are eligible to sell back one hundred twenty (120) hours of accrued vacation per payroll calendar year.

Effective December 25, 2011, employees may elect to sell back up to a maximum of sixty (60) hours of vacation accrued in 2012 and in accordance with the guidelines set below.

Internal Revenue Service (IRS) regulations require the City to report and withhold taxes on the value of the vacation time an employee is **eligible** to sell back. In order to ensure compliance with the IRS requirements and to avoid unanticipated tax consequences for 2012:

- ALP represented employees must elect the number of vacation hours they will sell back during 2012, up to the maximum of sixty (60) hours, by November 26, 2011.
- The election to sell back vacation hours in 2012 is **irrevocable**. This means that ALP represented employees must sell back the elected number of accrued vacation hours during 2012.
- ALP represented employees who do not make an election or who do not submit an irrevocable election form to Payroll on or before November 26, 2011, will not be eligible to sell back any vacation hours in 2012.
- ALP represented employees can elect to sell back only vacation hours accrued during 2012, and any vacation hours accrued and carried over prior to 2012 are not eligible for sell back in 2012.
- Any vacation hours accrued in 2012 by ALP represented employees will not be available for use until the employee's accrued vacation hours in 2012 equal the number of hours the employee has elected to sell back in 2012. Then, only those vacation hours accrued in 2012 over the number of hours an ALP represented employee elected to sell back in 2012 will be available for use by the employee. This means that hours elected for sell back may only be used for sell back purposes and cannot be used for vacation time off purposes.
- ALP represented employees may still use any vacation hours accrued and carried over prior to 2012, subject to the normal rules of requesting use of vacation. Any vacation hours accrued and carried over prior to 2012 are not eligible for sell back.

CITY PROPOSAL – DISABILITY LEAVE SUPPLEMENT

Proposed Language:

Effective June 26, 2011, if required to be absent from work due to a work related illness or injury, employees may receive a supplement which, when added to the Workers' Compensation Temporary Disability, equals 85% of the employees' base salary, up to a maximum of three (3) months (520 hours if used intermittently) for any current or 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, 2011, will no longer be eligible to receive DLS.

After the maximum time limit specified above, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, and (2) accrued Sick Leave once Vacation has 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.

Part-time and temporary employees are not eligible for this benefit.

This language is intended to:

- *Replace the section entitled "Disability Leave Supplement" in the ALP Tentative Agreement dated June 15, 2010.*

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

ECO-Pass

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

Commuter Check Program

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

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE ASSOCIATION OF LEGAL PROFESSIONALS OF SAN JOSE (ALP)

SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the Association of Legal Professionals (ALP) agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System.

Either the City or ALP 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 ALP receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and ALP 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 agreement between the City and ALP, 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 ALP'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 ALP.

FOR THE CITY:

FOR ALP:

Gina Donnelly Date
Office of Employee Relations

William Clark Date
Association of Legal Professionals of San
Jose (ALP)