

**RESOLUTION NO 75453**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING AN AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE OPERATING ENGINEERS, LOCAL NO. 3 (OE#3), WITH A TERM OF JULY 1, 2010 – JUNE 30, 2011**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the Agreement between the City of San José and the Operating Engineers, Local No. 3 (OE#3), with a term of July 1, 2010 – June 30, 2011, is hereby approved. The City Manager is hereby authorized to execute an Agreement on behalf of the City of San José.
2. The general terms of the Agreement are set out and described in the Supplemental Memorandum to the Mayor and City Council from the Director of Employee Relations, dated June 21, 2010, and attached hereto as Attachment A and incorporated in this Resolution.

ADOPTED this 22<sup>nd</sup> day of June, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

  
CHUCK REED  
Mayor

ATTEST:



LEE PRICE, MMC  
City Clerk



# SUPPLEMENTAL

COUNCIL AGENDA: 06/22/10  
ITEM: 3.15

## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Alex Gurza

**SUBJECT:** SEE BELOW

**DATE:** June 21, 2010

Approved

Date

6/21/10

**SUBJECT:** APPROVAL OF AN AGREEMENT WITH THE OPERATING  
ENGINEERS, LOCAL NO. 3, (OE#3)

### SUPPLEMENTAL

#### REASON FOR SUPPLEMENTAL MEMORANDUM

Item 3.15 on the City Council Agenda is for approval of an agreement or implementation of terms contained in the City's Last, Best and Final Offer with the Operating Engineers, Local No. 3 (OE#3). The Memorandum dated June 10, 2010, includes the terms of the City's Last, Best and Final Offer. A tentative agreement was reached with OE#3 on June 21, 2010, that achieves a total compensation reduction of 10% (5% ongoing and 5% one-time), and this Memorandum outlines the terms of that tentative agreement.

It is recommended that the City Council authorize the execution of an agreement for the period of July 1, 2010 through June 30, 2011, between the City and Operating Engineers, Local No. 3 (OE#3).

#### BACKGROUND

The City of San Jose provided OE#3 with its Last, Best and Final Offer on June 9, 2010. The elements of the Last, Best and Final Offer were contained in the Memorandum dated June 10, 2010.

This item was originally on the City Council Agenda for June 15, 2010, but was deferred until June 17, 2010. During the meeting on June 17, 2010, the City Council decided to again delay that decision until June 22, 2010, to allow the City and the bargaining unit time for further discussions.

The City and five bargaining units met on June 18, 2010. The City and the bargaining units developed language that, if ratified by the members, would be recommended by the City Manager for approval by the City Council. This draft language reached the 10% total compensation reduction, 5% ongoing and 5% one-time. It also avoided any City Charter issues that were previously identified with the bargaining units' prior proposal.

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OE#3 took this language to their membership on June 21, 2010, and the City has been notified that the membership ratified the language. Following confirmation of ratification, the City executed a tentative agreement. A complete copy of the tentative agreement is attached.

### ANALYSIS

The following is a summary of terms contained in the tentative agreement with OE#3 that are recommended to be implemented upon approval by the City Council:

<b>Term</b>	July 1, 2010 - June 30, 2011
<b>First 5% Ongoing Total Compensation Reduction</b>	<p>Effective June 27, 2010, employees will make an additional retirement contribution in the amount of 7.76% of pensionable compensation, and this amount will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability. This additional employee retirement contribution would be in addition to the employee retirement contribution rates as approved by the Federated City Employees' Retirement System Board.</p> <p>In the event the additional retirement contribution cannot be implemented or is ceased for any reason, employees would instead have an ongoing base pay reduction in the equivalent amount of 5% in total compensation.</p> <p>Part-time employees not in the City's retirement system will receive a 5.25% base pay reduction effective June 27, 2010.</p>
<b>Additional 5% One-Time Total Compensation Reduction-Retirement Contributions</b>	<p>Effective June 27, 2010 through June 25, 2011, employees will make an additional retirement contribution in the amount of 3.24% of pensionable compensation, and this amount will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability. This additional employee retirement contribution would be in addition to the employee retirement contribution rates as approved by the Federated City Employees' Retirement System Board.</p> <p>In the event the additional retirement contribution cannot be implemented or is ceased for any reason, employees would instead have their base pay temporarily reduced by the equivalent amount.</p>
<b>Additional 5% One-Time Total Compensation Reduction-Base Pay Reduction</b>	<p>Effective June 27, 2010 through June 25, 2011, all full-time employees and part-time employees in the Federated City Employees' Retirement System shall receive a 3.2% temporary base pay reduction. This will result in the top and bottom steps of the range being 3.2% lower.</p> <p>Part-time employees not in the City's retirement system will receive a 5.25% base pay reduction effective June 27, 2010 through June 25, 2011.</p>

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**Contingency  
Provision**

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

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

**Commencement of  
Negotiations**

It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) 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.

**COST IMPLICATIONS**

These terms meet the goal of a 10% total compensation reduction, including 5% in an ongoing total compensation reduction and another 5% in a one-time total compensation reduction. The approval of this tentative agreement will reduce the total compensation for employees represented by the Operating Engineers, Local No. 3 (OE#3). The calculated savings to the City is approximately \$7.1 million in all funds and approximately \$2.6 million in the General Fund. These cost savings are projected based on the Fiscal Year 2010-2011 Proposed Budget. It should be noted, however, that the actual amount of General Fund and all funds savings would need to be adjusted to reflect final budget approval by the City Council, any associated impacts on revenue from lower overhead or other reimbursements, and any adjustments to the cost-recovery fee program.



Alex Gurza  
Director of Employee Relations

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

OE#3

**TERM**

July 1, 2010-June 30, 2011

**ADDITIONAL RETIREMENT CONTRIBUTIONS****ON-GOING ADDITIONAL RETIREMENT CONTRIBUTIONS**

Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of **7.76%** of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate **7.76%** of pensionable compensation, as illustrated below:

Federated			
	City	Employee	Total
<b>Current Contribution Rates</b>	29.59%	10.30%	39.89%
<b>Contribution Rates With Additional Employee Contributions</b>	21.83%	18.06%	39.89%

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

**ONE-TIME ADDITIONAL RETIREMENT CONTRIBUTIONS (Fiscal Year 2010-2011)**

In addition to the retirement contributions specified above, effective June 27, 2010, through June 25, 2011, all employees will make an additional retirement contribution in the amount of **3.24%** of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board.

**TREATMENT OF ADDITIONAL EMPLOYEE CONTRIBUTIONS**

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

For the City:

*[Signature]* 05/21/10

*[Signature]*  
6/18/10

OE#3

**IMPLEMENTATION OF ADDITIONAL RETIREMENT CONTRIBUTIONS AND MISSED CONTRIBUTIONS**

It is the intent of the parties that the employees pay the entire annual amount of the additional retirement contributions for the 2010-2011 Fiscal Year. Since the additional on-going and one-time employee contributions will not be implemented by June 27, 2010, when the additional employee contributions are implemented in the City's payroll system the Finance Department will compute the rate that will generate the total amount of additional retirement contributions over the remaining pay periods in the fiscal year as if the contribution rate had been implemented on June 27, 2010.

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

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

**CONTINGENCY PROVISION**

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

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

**BALANCE TO EQUAL 10% OF TOTAL COMPENSATION**

Effective June 27, 2010 through June 25, 2011, all full-time employees and part-time employees in the Federated City Employees' Retirement System shall receive a 3.2% temporary base pay reduction. This will result in the top and bottom steps of the range being 3.2% lower.

**PART-TIME EMPLOYEES NOT IN RETIREMENT SYSTEM****Pay Reduction (Ongoing)**

Effective June 27, 2010, all part-time employees not in the City's retirement system shall have their salary ranges decreased by approximately 5.25%. This will result in the top and bottom steps of the range being 5.25% lower. All part-time employees not in the City's retirement system shall receive a 5.25% base pay reduction.

For the City!

*[Signature]* 06/21/10

*[Signature]*  
6/10/10

OE#3

Pay Reduction (One-Time)

Effective June 27, 2010 through June 25, 2011, all part-time employees not in the City's retirement system shall receive a 5.25% temporary base pay reduction. This is in addition to the 5.25% base pay reduction that will be effective June 27, 2010.

COMMENCEMENT OF NEGOTIATIONS

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.

For the City:  
*[Signature]* 06/21/10

*[Signature]*  
6/18/10