

August 8, 2012

Gregg McLean Adam  
CARROLL, BURDICK & McDONOUGH LLP  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104-4606

**Re: San Jose POA – Outsourcing Background Investigations  
File NO. 038780**

Dear Gregg:

We are in receipt of your letter dated July 26, 2012, responding to the City's proposal to outsource background investigations pursuant to Section 51.2 of the Memorandum of Agreement ("MOA") between the City of San Jose ("City") and the San Jose Police Officers' Association ("SJPOA"). Your letter indicates that the SJPOA wishes to file a grievance at Step 3 regarding the City's proposal to outsource background investigations.

Grievance Denial

We continue to disagree with your interpretation of Section 51.1, as previously outlined in a letter dated March 14, 2012, to which the SJPOA did not respond. A copy of this letter is enclosed. This letter states the City's position that the City would meet and confer with the POA regarding any positions above the 20 positions that the City already has the discretion to civilianize/contract out. Had the SJPOA disagreed on this interpretation of the language at the time you received the letter in March 2012, a grievance should have been filed at that time.

In addition, please see the enclosed June 3, 2011, memorandum to the Mayor and City Council, which details the terms of the tentative agreement between the City and the SJPOA reached in May 2011. There is a summary of the provisions at dispute here in the Council memo. This summary states:

*"The City will have the discretion to contract out and/or civilianize twenty positions during the term of the Agreement. Any further contracting out and/or civilianization of positions represented by the SJPOA during the term of this agreement would be subject to the meet and confer process."*

This statement in the council memo further supports our interpretation of this language. In addition, this memo was provided to the SJPOA back in May 2011. If the SJPOA at that time disagreed on the interpretation of this language, it should have been raised at that time.

For these reasons, your grievance is not timely filed.

### Mediation

We have provided the SJPOA an opportunity to meet and confer, but we have not received any counter proposal from the SJPOA on this issue by August 1, 2012. Based on this, we believe the parties are at impasse.

Please let us know by August 15, 2012, if you would like to proceed to mediation under the impasse procedures outlined in Resolution 39367.

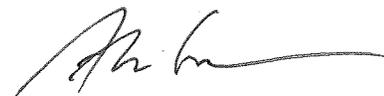
### Conclusion

Despite the fact that the SJPOA has procedural disagreements with the City's plan to contract for background investigations services, we certainly hope that the POA understands and agrees with the priority of performing backgrounds on potential new San Jose Police Officers as quickly as possible so that they can be hired and trained in order to begin providing services to the community. As you know, the reason the City is seeking to have contractors provide these services is because the Department pulls Police Officers out of patrol to perform backgrounding. Using contractors to perform backgrounding would keep more Police Officers on patrol providing services to the community.

Because of this urgent need, the City will be proceeding with performing backgrounding using contractual services while the POA utilizes these procedural processes. It is again important to note that this will not result in the elimination of any Police Officer positions. The City will retain the right to terminate any contract in the event the POA prevails in challenging the City's use of contractors to perform backgrounding in order to maximize the number of Police Officers on patrol.

In closing, we ask that the POA reconsider its opposition to using contractual services for backgrounding in order to keep Police Officers on patrol.

Sincerely,



Alex Gurza  
Deputy City Manager

- c. Chris Moore, Chief of Police  
Edgardo Garcia, Deputy Chief  
Jim Unland, President, San Jose POA

Enclosures

March 14, 2012

Gregg Adam  
Carroll, Burdick & McDonough, LLP  
44 Montgomery Street  
Suite 400  
San Francisco, CA 94104

**RE: Letter Dated March 12, 2012 Regarding Article 51**

Dear Gregg:

I am responding to your letter dated March 12, 2012, regarding the POA's request to meet and confer regarding the civilianization of three additional positions in accordance with Section 51.1 of the current MOA with the San Jose Police Officers' Association. We are confused by your request to meet and confer as the language clearly states that the City "**has the discretion**" to contract out and/or civilianize twenty positions during the term of this Agreement. We already met and conferred with the POA over this language in the contract negotiations in 2011 and 20 positions was what was agreed upon. It was the City's discretion as to what those positions were and there are no further meet and confer obligations. This is made even more clear by the language in 51.2, which states:

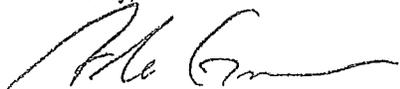
*Any contracting out and/or further civilianization of positions represented by the POA during the term of this Agreement would be subject to the meet and confer process. The City will provide advance notice to the POA and the opportunity to demand to meet and confer regarding contracting out and/or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

This language is clear that the City would meet and confer with the POA regarding any positions above the 20 positions that the City already has the discretion to civilianize/contract out.

Although we do not have any obligation to meet and confer with the POA regarding these three positions, we would be happy to meet to discuss these further with you. However, to not delay the process any, we will simultaneously be moving forward with the processes by which to civilianize these positions.

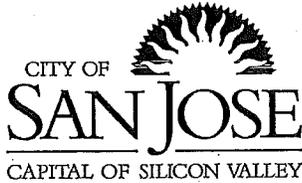
Please let me know if you would like to meet to discuss this further.

Sincerely,



Alex Gurza  
Deputy City Manager

c: Chris Moore, Chief of Police  
Rikki Goede, Assistant Chief of Police  
Phan Ngo, Deputy Chief of Police  
Jim Unland, POA President



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Alex Gurza

**SUBJECT:** SEE BELOW

**DATE:** June 3, 2011

Approved

Date

6/3/11

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

## RECOMMENDATION

Adoption of a resolution to approve the terms of a collective bargaining agreement between the City and the San Jose Police Officers' Association (SJPOA) for the term of July 1, 2011 to June 30, 2012 or June 30, 2013, and authorizing the City Manager to execute an agreement, pending ratification by the SJPOA membership.

## OUTCOME

Adoption of the resolution and authorization to execute an agreement would result in a collective bargaining unit agreement between the City of San Jose and the San Jose Police Officers' Association (SJPOA) for the term of July 1, 2011 to June 30, 2012 or June 30, 2013, pending ratification by the SJPOA membership.

## 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 2<sup>nd</sup> tier pension and retiree healthcare benefits for new hires; options for current employees; SRBR or "13<sup>th</sup> Check;" sick leave payout; disability leave supplement; and compensation structure.

The San Jose Police Officers' Association represents approximately 1,074 full time budgeted positions in the 2011-2012 Proposed Operating Budget. This bargaining unit includes employees in

the classifications of Police Officer, Police Sergeant, Police Lieutenant, Police Captain and Deputy Chief of Police.

The City commenced negotiations for a successor Memorandum of Agreement (MOA) with the SJPOA in January 2011. The City and the SJPOA reached a Tentative Agreement on June 3, 2011, that achieves a 10% total compensation reduction and includes agreements to continue negotiations on other reforms, including retirement and sick leave payout. The Tentative Agreement is pending ratification by the SJPOA membership. The SJPOA will notify the City of the ratification results prior to the June 14, 2011, City Council meeting.

### ANALYSIS

A complete copy of the Tentative Agreement is attached. The following is a summary of the key provisions:

**Term and Wages** Effective June 26, 2011, all salary ranges for employees represented by SJPOA shall be decreased by approximately 10%. All employees represented by SJPOA shall receive a 10% base pay reduction.

The parties agree that the 10% reduction will begin June 26, 2011. The City contends that the 10% base pay reduction should be ongoing, while the SJPOA contends that it should cease effective June 23, 2012. Because there is no agreement on this issue, the issue of whether or not the 10% reduction should be ongoing or one-time will be submitted to binding interest arbitration under Charter Section 1111.

The parties agree that in accordance with Charter Section 1111, the last offer of settlement for the SJPOA will be that the 10% reduction be one-time, expiring on June 23, 2012 and the City's last offer of settlement will be that the 10% is on-going and continues until modified in future negotiations or arbitration.

The parties agree that if the arbitration panel awards the 10% as one-time, the term of this agreement will be one year and shall expire on June 30, 2012. If the arbitration panel awards the 10% ongoing, the term of this agreement will be two years and shall expire on June 30, 2013.

The parties agree to proceed to arbitration immediately so that an arbitration award can be issued no later than the end of calendar year 2011. The parties also agree that if for any reason a decision from the arbitration panel is not received by June 23, 2012, the 10% reduction shall continue until a final award is issued. The term of the MOA and the 10% will then be pursuant to the terms of the arbitration award.

<b>Healthcare Dual Coverage</b>	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.
<b>Modified Duty Assignment</b>	<p>Effective October 1, 2011, the number of exempt officer positions shall be reduced to 10.</p> <p>The City agrees to indemnify the association as to any liability arising solely from the implementation of the change in the number of exempt officer positions stated above.</p>
<b>Civilianization/ Contracting Out</b>	The City will have the discretion to contract out and/or civilianize twenty positions during the term of this Agreement. Any further contracting out and/or further civilianization of positions represented by the SJPOA during the term of this Agreement would be subject to the meet and confer process.
<b>Airport Police Services Outsourcing</b>	At the City's option, Airport Police Services and this service may be contracted out.
<b>Subsidy for Public Transit</b>	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.
<b>Layoff Reinstatement List</b>	The layoff reinstatement eligible lists will be valid for three years.
<b>Agency Fee Provision</b>	Upon notice from the SJPOA, the City agrees to implement an agency fee provision as soon as practical.
<b>Side Letters</b>	<ul style="list-style-type: none"><li>▪ <u>Retirement Reform</u> – The City and SJPOA agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.</li></ul> <p>As part of the negotiations related to retirement reform, the parties will meet and confer regarding an opt in program in which current employees could voluntarily choose to opt out of the current level of pension benefits into a lower level of benefits.</p> <p>In the event that the City and the SJPOA do not reach an agreement on the specific design of an opt in program by November 1, 2011, at the SJPOA's option the City will implement the opt in program that was proposed by the SJPOA during contract negotiations (2.5% for the first</p>

20 years and 3% after 20 years with an 80% maximum, 2% fixed COLA and 3 year final average salary) effective December 25, 2011, under the following conditions:

1. 40% of the employees represented by the SJPOA sign an irrevocable waiver to elect to go into the opt in program described above. Employees would be required to sign a document indicating that they understand that if the program is implemented, this is an irrevocable election and that they will not be able to opt back into the former tier of benefits.

**AND**

2. Any implementation of an opt-in program is contingent upon receiving an IRS qualification letter.

Even if 40% of the employees represented by the SJPOA sign an irrevocable waiver to opt in and IRS approval has been received, the SJPOA will have the option not to proceed with implementation of the opt in program. If less than 40% of the employees represented by the SJPOA sign an irrevocable waiver to opt in and IRS approval has been received, the opt in program may still be implemented by mutual agreement of both the City and the SJPOA.

The parties agree that the dates contained herein regarding the opt in program can be modified by mutual agreement of the parties.

The SJPOA expressly acknowledges that this opt in program is not the solution to the costs of the City's retirement benefits and the unfunded liabilities for both pensions and retiree healthcare. The City has informed the SJPOA that even if the opt in program is implemented, further changes will be required to significantly reduce the costs of pension and retiree healthcare benefits and the unfunded liabilities, which may include a substantially lower cost tier for new employees and reduced benefits and/or increased employee contributions for current employees, including those who may elect the opt in program. Neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

- Sick Leave Payout – The City and SJPOA agree to continue meeting and conferring on sick leave payout for current and future employees.
- Layoff – Either the City or SJPOA may provide notice to the other of its request to meet and confer on modifications, if any, to the City's layoff process and procedures.

- Supplemental Retiree Benefit Reserve (SRBR) – The City and SJPOA agree to discuss the SRBR program in the Police and Fire Department Retirement Plan.

### 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 June 14, 2011, City 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, the City and the SJPOA reached an agreement that achieved a 3.82% reduction in total compensation, of which only 0.67% was ongoing. The 0.67% ongoing reduction was due to healthcare plan design changes that were part of that agreement (85/15 cost sharing, \$25 co-pay plan and reduction in health in lieu). Per City Council authorization, to reach a 10% total compensation reduction, a 9.33% reduction in total compensation is needed to be achieved for 2011-2012. As part of this tentative agreement, the SJPOA agreed to a 10% base pay reduction that in addition to the 0.67% ongoing total compensation reduction agreed to for 2010-2011 achieves the 10% total compensation reduction.

HONORABLE MAYOR AND CITY COUNCIL

June 3, 2011

**Subject: Approval of an Agreement with SJPOA**

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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 of the Tentative Agreement, which includes the 10% base pay reduction, generate additional savings of approximately \$20.7 million in the General Fund based on the positions included in the 2011-2012 Proposed Operating Budget. When factoring the impact of annual retirement and unemployment contributions the actual net savings to the General Fund totals \$12.975 million. These savings also do not include the currently unknown cost increases for healthcare for the second half of 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 SAN JOSE POLICE OFFICERS' ASSOCIATION  
TENTATIVE AGREEMENT**

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**TERM AND WAGES**

See Attached

**HEALTHCARE DUAL COVERAGE**

See Attached

**MODIFIED DUTY ASSIGNMENT**

See Attached

**CIVILIANIZATION/CONTRACTING OUT**

See Attached

**AIRPORT POLICE SERVICES OUTSOURCING**

See Attached

**SUBSIDY FOR PUBLIC TRANSIT**

See Attached

**HOUSEKEEPING**

See Attached

**LAYOFF REINSTATEMENT LISTS**

See Attached

**AGENCY FEE PROVISION**

See Attached

**CITY OF SAN JOSE AND SAN JOSE POLICE OFFICERS' ASSOCIATION  
TENTATIVE AGREEMENT**

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**SIDE LETTERS**

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

*This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during these negotiations. Anything not included in this document is not part of the Tentative Agreement.*

FOR THE CITY:

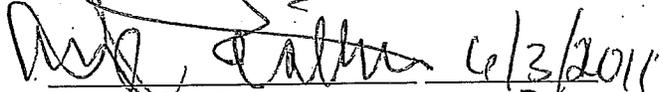


Alex Gurza  
Director of Employee Relations

6-3-11

Date

FOR THE UNION:



George Beattie  
San Jose Police Officers' Association

Date

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

**TERM AND WAGES**

**ARTICLE 5 WAGES AND PREMIUM PAY**

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

*The parties agree that the 10% reduction will begin June 26, 2011. The City contends that the 10% base pay reduction should be ongoing, while the POA contends that it should cease effective June 23, 2012. Because there is no agreement on this issue, the issue of whether or not the 10% reduction should be ongoing or one-time will be submitted to binding interest arbitration under Charter Section 1111.*

*The parties agree that in accordance with Charter Section 1111, the last offer of settlement for the POA will be that the 10% reduction be one-time, expiring on June 23, 2012 and the City's last offer of settlement will be that the 10% is on-going and continues until modified in future negotiations or arbitration.*

*The parties agree that if the arbitration panel awards the 10% as one-time, the term of this agreement will be one year and shall expire on June 30, 2012. If the arbitration panel awards the 10% ongoing, the term of this agreement will be two years and shall expire on June 30, 2013.*

*The parties agree to proceed to arbitration immediately so that an arbitration award can be issued no later than the end of calendar year 2011. The parties also agree that if for any reason a decision from the arbitration panel is not received by June 23, 2012, the 10% reduction shall continue until a final award is issued. The term of the MOA and the 10% will then be pursuant to the terms of the arbitration award.*

~~5.1 ONE-TIME ADDITIONAL RETIREMENT CONTRIBUTIONS~~

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

employees is to reduce the City's required pension retirement contribution rate by a commensurate 5.25% of pensionable compensation, as illustrated below:

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

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

**TREATMENT OF ADDITIONAL EMPLOYEE CONTRIBUTIONS**

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

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

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

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

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

**CONTINGENCY PROVISION**

In the event that the additional employee retirement contributions described above are not implemented for any reason by October 1, 2010, or the Police & Fire Department Retirement Board's actuary concludes that the City's contribution rate could not be reduced by a commensurate amount, the equivalent amount of total compensation shall be taken as a base

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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~~pay reduction and will increase on a pro-rata basis over the remaining pay periods in the fiscal year to achieve the equivalent total compensation reduction.~~

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**HEALTHCARE DUAL COVERAGE**

8.1 Health Insurance Coverage

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

8.2 Dental Plan

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**MODIFIED DUTY ASSIGNMENT**

**ARTICLE 39      MODIFIED DUTY ASSIGNMENT**

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

Effective October 1, 2011, the number of exempt officer positions shall be reduced to 10.

The City agrees to indemnify the association as to any liability arising solely from the implementation of the change in the number of exempt officer positions stated above. The indemnification also extends to the act of Association in cooperating in the defense of this change in the number of exempt officer provisions before any forum. However, the City will not indemnify the Association for any liability caused by separate acts or omissions independent of the acts related to the reduction in the number of exempt officer positions. For example, the City would not indemnify the Association if the Association is found liable for misrepresentation or nondisclosure to its membership, or liable for any breach of duty of fair representation other than a breach predicated solely on the acts or omissions related to the change in the number of exempt officer positions.

The City will not pay attorneys' fees to or on behalf of the Association but at the sole option of the Association, the City Attorney's Office will defend the Association against claims or lawsuits arising from implementation of the change in the number of exempt officer positions so long as the Association waives any conflict of interest, actual or potential, arising out of the representation by the City Attorney's Office. However, legal counsel for the City shall keep the Association informed of all developments particularly as to any possible settlement of the dispute/litigation. The Association shall have the right to participate in the defense.

The City's obligation to indemnify, as described above, is conditioned upon the City having primary authority for the defense. The Association and the City Attorneys shall cooperate in the defense of the case. The Association may not agree to any settlement involving its financial liability without consent of the City.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT

**CIVILIANIZATION/CONTRACTING OUT**

**ARTICLE 51      MODIFICATION OF BARGAINING UNIT WORK**

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

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

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

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

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

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

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

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

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**AIRPORT POLICE SERVICES OUTSOURCING**

*At the City's option, employees represented by the POA will no longer provide Airport Police Services and this service will be contracted out.*

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**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.*

2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT

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HOUSEKEEPING

5.2.9 Anti-Terrorist Training Pay

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

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**ARTICLE 8 INSURANCE BENEFITS**

**8.1 Health Insurance Coverage**

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

~~8.1.2 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~8.1.38.1.2 Effective December 26, 2010, (The City will pay eighty-five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~8.1.48.1.3 Co-pays for all available HMO plans shall be as follows~~A \$25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

- ~~a. Office Visit Co-pay: \$10~~
- ~~b. Prescription Co-pay: \$5 for generic and \$10 for brand name (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)~~
- ~~c. Emergency Room Co-pay: \$50~~

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

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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

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

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

**ARTICLE 23 HOLIDAYS**

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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

**ARTICLE 30 VACATIONS**

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

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

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

30.1.2 ~~Carry-Over of Vacation Leave~~

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**LAYOFF REINSTATEMENT LIST**

**22.6 Layoff Reinstatement Eligible List**

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

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

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

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

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

**2011 CITY OF SAN JOSE – POA NEGOTIATIONS  
TENTATIVE AGREEMENT**

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**AGENCY FEE PROVISION**

*Upon notice from the POA, the City agrees to implement an agency fee provision as soon as practical.*

**Side Letter Agreement**

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

**SICK LEAVE PAYOUT**

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

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

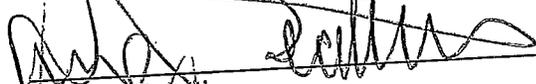
This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

  
\_\_\_\_\_  
Alex Gurza  
Director of Employee Relations

6-3-11  
Date

FOR THE UNION:

  
  
\_\_\_\_\_  
George Beattie  
President, San Jose Police Officers' Association

6/3/2011  
Date

## **Side Letter Agreement**

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

### **RETIREMENT REFORM**

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

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

#### **Opt In Program**

As part of the negotiations related to retirement reform, the parties will meet and confer regarding an opt in program in which current employees could voluntarily choose to opt out of the current level of pension benefits into a lower level of benefits.

In the event that the City and the POA do not reach an agreement on the specific design of an opt in program by November 1, 2011, at the POA's option the City will implement the opt in program that was proposed by the POA during contract negotiations (2.5% for the first 20 years and 3% after 20 years with an 80% maximum, 2% fixed COLA and 3 year final average salary) effective December 25, 2011, under the following conditions:

1. 40% of the employees represented by the POA sign an irrevocable waiver to elect to go into the opt in program described above. Employees would be required to sign a document indicating that they understand that if the

program is implemented, this is an irrevocable election and that they will not be able to opt back into the former tier of benefits.

**AND**

2. Any implementation of an opt-in program is contingent upon receiving an IRS qualification letter.

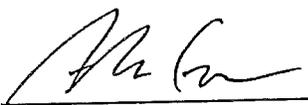
Even if 40% of the employees represented by the POA sign an irrevocable waiver to opt in and IRS approval has been received, the POA will have the option not to proceed with implementation of the opt in program. If less than 40% of the employees represented by the POA sign an irrevocable waiver to opt in and IRS approval has been received, the opt in program may still be implemented by mutual agreement of both the City and the POA.

The parties agree that the dates contained herein regarding the opt in program can be modified by mutual agreement of the parties.

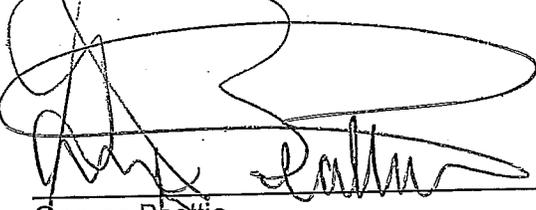
The POA expressly acknowledges that this opt in program is not the solution to the costs of the City's retirement benefits and the unfunded liabilities for both pensions and retiree healthcare. The City has informed the POA that even if the opt in program is implemented, further changes will be required to significantly reduce the costs of pension and retiree healthcare benefits and the unfunded liabilities, which may include a substantially lower cost tier for new employees and reduced benefits and/or increased employee contributions for current employees, including those who may elect the opt in program. 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:

 6-3-11  
\_\_\_\_\_  
Alex Gurza Date  
Director of Employee Relations

FOR THE UNION:

 6/3/2011  
\_\_\_\_\_  
George Beattie Date  
President, San Jose Police Officers' Association

# Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

## LAYOFF

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

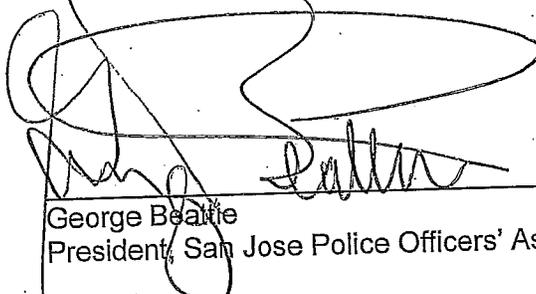
This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

  
\_\_\_\_\_  
Alex Gurza  
Director of Employee Relations

6-3-11  
\_\_\_\_\_  
Date

FOR THE UNION:

  
\_\_\_\_\_  
George Beattie  
President, San Jose Police Officers' Association

4/3/2011  
\_\_\_\_\_  
Date

