

July 10, 2012

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VIA EMAIL AND REGULAR MAIL

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

**Re: San Jose POA—Outsourcing Background Investigations
File No. 038780**

Dear Alex:

I write on behalf of San Jose Police Officers' Association ("POA") to respond to the May 10, 2012 Notice Regarding Potential Outsourcing of Backgrounding Services you sent to Jim Unland. As you know, the parties met to discuss the City's proposal on Thursday, June 28, 2012.

At our meeting, we established that the City has presently civilianized 19 positions under Section 51.1 of the parties' Memorandum of Agreement ("MOA"). The City is proposing to further civilianize all future background investigations of applicants for sworn positions with the San Jose Police Department. Presently, all background investigations—which I understand to occur in 16-to-18 week cycles—are being carried out by either full-time officers or exempt officers working pursuant to Section 39 of the MOA.

We also discovered at our meeting that the parties have a fundamental disagreement about the meaning of Section 51.1. We understand the City's position to be that there is no cap on the number of positions that can be civilianized during the lifetime of the MOA, so long as the City meets and confers with the POA about any proposal to civilianize positions above the "twenty positions" referenced in Section 51.1.

The POA's position is that "twenty positions" is the maximum number that can be civilianized during the lifetime of the MOA.

Accordingly, there are two levels of concern that the POA has with the City's proposal as explained:

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(1) The City would exceed the maximum number of positions that may be civilianized under Section 51.1; and,

(2) The particular type of work that is to be civilianized—background investigations—is work that is quintessentially the work of police officers, not civilians. The POA agreed that up to 20 positions could be civilianized, so long as those positions did not involve core police officer functions. Investigating is at the heart of what police officers do. For this reason, consistent with the bargaining history of the MOA, and unlike the positions civilianized earlier this year pursuant to Section 51.1 (a lieutenant position overseeing Police Personnel, and two police officer positions in permits), the POA will not approve the civilianization of background investigations.

We ask that the City withdraw its proposal at this time, subject to re-presenting it during negotiations for a successor MOA.

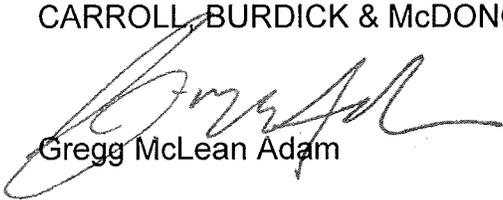
If the City will not withdraw its proposal, please advise me at your earliest opportunity. I anticipate that the POA will want to file a grievance.

And over and above any such grievance, Section 51.2 of the MOA requires meet-and-confer negotiations about whether that type of work—i.e., investigations—can be civilianized under the parties' agreement.

I trust you will find this letter self-explanatory; however, if not, or if you have any other questions or would like to discuss the issues further, please call the undersigned.

Very truly yours,

CARROLL BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Chris Moore, Chief of Police
Edgardo Garcia, Deputy Chief
Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA
Franco Vado, Chief Financial Officer, San Jose POA