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September 12, 2012

CHARLES SAKAI  
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*VIA E-Mail and US Mail*

Gregg McLean Adam  
Carroll, Burdick & McDonough LLP  
44 Montgomery Street  
San Francisco, CA 94104  
gadam@cbmlaw.com

**Re: City of San Jose and San Jose Police Officers Association  
Second Tier Retirement Benefits**

Dear Gregg:

As we have discussed in our various telephone conversations (as well as the various voicemails and e-mails we have exchanged), the City believes it has a responsibility to enact the voters' will by working with the San Jose Police Officers Association ("POA") and the City's other unions to develop and implement a second tier retirement formula (Tier 2) consistent with Measure B's parameters on retirement benefits for new employees. I know that POA has a strong interest in reaching conclusion on this issue as well (that was, after all, the basis of your recently-withdrawn petition to compel interest arbitration).

As you know, the City has proposed the following Tier 2 retirement formula for new hires:

- 2% per year of service at age 60
- Three years average final compensation
- Maximum benefit level of 65% of final average compensation
- COLA capped at 1.5% per annum

The attached proposal, which has been presented to you before, is entirely consistent with the maximum benefit levels provided for in Measure B. The Normal Cost of this proposal is approximately 22.4%, as estimated by the City's consulting actuary, Bartel and Associates, based on the June 30, 2011, valuation data. As you know, the actual contribution rates will be set by the Police and Fire Department Retirement Plan Board's actuary, Cheiron. Pursuant to the terms of Measure B, this would be split equally between the City and members. We would like to note that Measure B places a 9% cap on the City's costs in the event the City contributes to a defined contribution or other retirement plan in addition to the Tier 2 defined benefit plan.<sup>1</sup>

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<sup>1</sup>It is our understanding that you have requested an estimate for the normal cost of the 3% @55 benefit. However, the City will not have an estimate available as the 3% @55 benefit is not what is proposed by the City and such benefit exceeds the maximum benefit provided under Measure B.





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Since I think it unlikely that the POA will propose a lower level of benefits than the City proposal, I would urge your client to consider simply accepting the City's proposal. If the POA is not willing to agree to the maximum benefit under Measure B, the City is prepared to move forward to interest arbitration using Judge Flaherty (presumably to arbitrate over a lower benefit) and I appreciate your contacting his office for dates. Alex Gurza will serve as the City's panel member.

Since the City's next Police Academy will conclude in April 2013, it is imperative that the arbitration be completed by early January so that the City can prepare and enact ordinances implementing the changes in the retirement formula for new hires. Therefore, we would propose that the parties agree to hold the interest arbitration on November 19-20, 2012. That also gives us ample time to work together to resolve this matter without incurring any cancellation charges (we would simply need to cancel the arbitration by October 19).

I will contact Judge Flaherty's office to reserve these dates. Please let me know as soon as possible if those dates are not acceptable to the POA so that we can find other acceptable dates which still permit the City to implement the second tier retirement formula in time for the April Police Academy.

Sincerely,

Charles Sakai

Cc (via e-mail only): Alex Gurza, Deputy City Manager  
Nora Frimann, Assistant City Attorney  
Jennifer Schembri, Assistant to the City Manager

CDS/lr  
Attachment

## 2012 CITY OF SAN JOSE – SAN JOSE POLICE OFFICERS’ ASSOCIATION

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### CITY PROPOSAL – RETIREMENT BENEFITS FOR NEW EMPLOYEES

*The benefits set forth below shall apply to full time eligible employees who are hired on or after September 30, 2012, and shall be referred to as Tier 2 in the Police and Fire Department Retirement Plan.*

Proposed Language:

#### Pension Formula

The pension benefit formula for eligible employees hired on or after September 30, 2012, shall be 2.0% percent per year of service subject to a maximum of 65% of final compensation.

#### Final Compensation

Final compensation shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

#### Minimum Service

Employees shall be eligible for a service retirement after earning ten (10) years of retirement service credit and meeting the age requirement specified below.

#### Retirement Service Credit

Employees shall be eligible for a full year of service credit upon reaching 2,080 hours of regular time worked (including paid leave, but not overtime). The maximum retirement service credit in a calendar year shall not exceed one year.

#### Age

Employees hired on or after September 30, 2012, shall be eligible to retire at age 60 with at least ten (10) years of retirement service credit.

Employees can retire at a minimum of age 55 with at least ten (10) years of retirement service credit; however, the member’s benefit shall be reduced so it does not exceed the actuarial value of full retirement. This reduced benefit shall be determined by the Police and Fire Department Retirement Plan’s actuary.

#### Deferral of Retirement

Employees who leave employment who have at least ten (10) years of retirement service credit may defer the retirement benefit until the employee becomes eligible to retire.

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### Cost of Living Adjustment (COLA)

Plan members shall receive a cost of living adjustment limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment shall be prorated based on the number of months retired.

### Disability Retirements

#### *Service Connected*

Plan members who are eligible for a service connected disability retirement benefit shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

#### *Non-Service Connected*

Plan members who are eligible for a non-service connected disability retirement benefit shall receive 2.0% times years of City service, but not less than 20% and not greater than 50% based on the average annual pensionable pay of the highest three consecutive years of service. Plan members shall not be eligible for a non-service connected disability retirement unless the member has earned 5 years of retirement service credit.

### Survivorship Benefits

#### *Death Before Retirement*

If an employee dies during employment with the City and was not eligible for retirement, a return of employee contributions, plus interest shall be returned to the spouse, domestic partner, or estate.

If an employee dies during employment with the City and was eligible for retirement, a monthly benefit equivalent to what the employee would have received if retired at the time of death shall be provided to the spouse, domestic partner, or estate.

#### *Death Before Retirement - Employees killed in the line of duty*

If an employee is killed in the line of duty, the surviving spouse or domestic partner shall receive a monthly benefit equivalent to 50% of the average annual pensionable pay of the highest three consecutive years of service.

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### *Death After Retirement*

At the time of retirement, an employee may elect to receive a lower pension benefit to provide survivorship benefits to a spouse/domestic partner or child(ren) designated at the time of retirement. The Board’s actuary shall determine the pension benefit for a 50%, 75% or 100% continuance that is actuarially equivalent to the member’s benefit.

### Defined Contribution Plan

Employees may supplement the retirement benefit by electing to make contributions to a defined contribution plan offered by the City, up to the annual IRS limit.

### Cost Sharing

The City and Plan members in Tier 2 shall share equally in all costs of Tier 2 to the pension plan, including, but not limited to administrative expenses, normal cost and unfunded actuarial liability.

### Reciprocity

Employees hired on or after September 30, 2012, shall be eligible for the benefits under the reciprocal agreement with CalPERS that are in effect at the time of the employee’s retirement.

### Rights

The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit provided by the City.

The retirement benefits for employees in Tier 2 shall include those described herein and shall not include any other benefits received by other members of the Police and Fire Department Retirement Plan, including, but not limited to, the purchase of service credit and redeposit of contributions.