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March 5, 2012

VIA E-MAIL AND U.S. MAIL

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

Re: Retirement Reform Correspondence

Dear Gregg:

I write in response to letters from you and your client dated March 1st, and your joint proposal and letter with the San Jose Fire Fighters (IAFF, Local 230) dated March 2nd and 3rd. (Enclosed.) We will be responding to the information requests contained in your March 1st letter separately. I note that your proposal was received 21 days after our last day of mediation, and only one working day before the City Council is scheduled to vote on the proposed retirement ballot measure.

The City of San Jose appreciates your explicit recognition that a charter amendment is necessary to address the retirement issues facing the City. We also appreciate your attempt to end the impasse that has continued over many months of mediation. We have carefully reviewed and considered this proposal as an attempt to break the current impasse between the parties.

Unfortunately, your new proposal appears to be a step backwards in some regards, including the re-introduction of the CalPERS option that the City rejected months ago. We discussed this proposal at length and ultimately rejected it during negotiations and mediation. Subsequent to your CalPERS proposal made initially in September 2011, the POA and Local 230 proposed in December 2011 a lower level of benefit for the opt-in tier that provides a 75% maximum benefit. However, you are now back to proposing the CalPERS benefits, including an opt in tier that provides a 90% maximum benefit. This underscores the fact that the parties continue to be at impasse after 8 months of negotiations and mediation.

While I will not attempt to address all of the points of difference between this proposal and the City's, the following are some of the major issues which would need to be addressed to bridge the current impasse:



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- The proposal returns to the idea of moving employees out of the current, independent San Jose Police and Fire Department Retirement Plan and into the State's CalPERS plans. The City has previously rejected this proposal for a variety of reasons – not least because the primary “savings” the City would achieve is simply a delay in paying existing liabilities due to restarting the amortization period. In addition, among other things, moving employees from the City's pension plan to CalPERS would require redistributing existing plan assets to CalPERS, a difficult problem in light of the underfunded status of the plan and the fact that all retirees and Tier I employees would remain in San Jose's retirement plan. And, of course, CalPERS offers the City and unions far less flexibility in how benefits can be structured. We have discussed all of these concerns previously and had understood that the POA had agreed to drop this proposal. Therefore, we are surprised that you have chosen to revive it at this late date.
- The proposal for the opt in tier is back to your September 2011 proposal that would provide the CalPERS 3% at 55 plan, which (as we have previously discussed) provides little if any savings to the City. Indeed, the plan at certain ages and years of service is actually richer for employees. The formula still provides a 90% pension benefit at 30 years of service.
- With respect to new employees, although CalPERS identifies the plan as 2% at 50, this CalPERS formula provides 2.7% of final compensation for every year of service at age 55. This is a considerably greater benefit with a considerably higher cost than the plan the City is proposing for new employees. For example, the revised proposed ballot measure would limit a defined benefit pension program to no more than 2% for every year of service. Also, while the City is seeking a 50/50 cost share for new employees, the plan you propose would limit employee contributions to 10% regardless of unfunded liability. (Incidentally, we understand that the CalPERS regulations currently limit contributions to 9%.) As we have said, the City views shared responsibility for the cost of any pension plan covering new employees as critical if the City is to continue offering defined benefit plans in the future.
- The “guarantee” of pay reductions if fewer than 60% of covered employees opt in to Tier II of the program appears to be a slightly new approach. However, given that the CalPERS program offered is little changed from existing benefits offered, we do not doubt that the opt in rate would be considerable. The problem is that even 100% opt in would not materially reduce the benefits offered. Therefore, it seems unlikely to produce the “guaranteed” savings you assert. We did note, however, that your proposal includes compensation reductions of up to 16% to achieve savings. This is consistent with the City's proposed revised ballot measure, which achieves savings from compensation reductions through additional retirement contributions or pay reductions that apply to



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those employees who choose to stay in the more expensive current benefit structure. However, your proposed compensation reductions are tied to the proposal that moves employees to the 3% at 55 (90%) CalPERS benefit.

As we have discussed in negotiations and mediation, there are many other ways in which the proposal you are making fails adequately to address the City's concerns, as they have been articulated both at the table and in the draft ballot measures we have provided you.

In your March 1st letter, you suggest that the language changes proposed by the City Manager -- provided to the Union in mediation -- require additional meet and confer and that *Santa Clara County Registered Nurses v. County of Santa Clara* stands for the proposition that the City is legally obligated to once again delay the ballot measure. We disagree on both counts. As to the first, without wishing to reveal matters within the veil of mediation, suffice it to say the San Jose Police Officers' Association had more than sufficient opportunity to respond to the City's proposal. The City left mediation on February 10, 2012, saying the door remained open for additional mediation sessions and the mediator provided the parties with additional dates. However, we did not receive a substantive proposal until March 2nd (one working day before the City Council's last day to act to place the matter on the ballot for a June 2012 election), and that proposal, as discussed above, differs little from the proposal the City rejected pre-mediation. No change made or proposal proffered in the last month even remotely suggests impasse has been broken.

As to the second point, the facts of this case are radically at variance with the *Santa Clara* case. We have negotiated and mediated for 8 months now, and twice delayed the election to permit further mediation. We do not believe the *Santa Clara* case stands for the proposition that any change in position on either side bars the City from placing a matter on the ballot. The City Council, of course, has the constitutional authority to place charter amendments on the ballot, and, while we believe we have fully complied with all bargaining obligations under the MMBA, in the last analysis, the City Council retains the authority to make changes in the measure, especially changes responsive to the Unions' input in mediation.

We value our historically positive relations with the POA, and share your apparent wish that the *Seal Beach* negotiations had led to greater consensus. However, your newest proposal only appears to highlight the deep differences between the parties on critical issues involved in pension reform. These are hard issues, to be sure. We do not doubt the differences are sincere. However, our last proposal is as far as we can go in addressing the concerns you have raised (as we assume yours does with our concerns), and do not believe anything in the last few weeks raises the hope that returning to the bargaining table will produce a different result.

Finally, even if you believe the parties may break impasse on the critical issues, despite our unsuccessful efforts over the past eight months and despite your earlier rejection of the City's



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current proposal, the untimeliness of your proposal renders further bargaining impractical. We do not see how an agreement can be reached before March 6th – the final City Council meeting before the last date to place this measure on the June 2012 ballot.

In December, when the City Council previously intended to place a measure on the ballot (for a March 2012 election) bargaining units argued that delaying the measure until June 2012 would enable the parties to reach an agreement. The City complied with this request because it clearly reflected a sincere desire to reach an agreement through further mediation. We continue to appreciate your efforts to reach an agreement, but, frankly, we do not see how issues that have separated the parties for eight months can be solved at this point. Nor do we understand why the POA and Local 230 failed to make this proposal at an earlier date, especially since on February 10th the City presented to you in mediation the proposal that is before the City Council on March 6th.

Sincerely,

Jonathan V. Holtzman

JVH/je

cc: Alex Gurza, Deputy City Manager

Enclosures



San Jose Fire Fighters • Local 230

425 E. Santa Clara Street, Suite 300, San Jose, CA 95113 • (408) 286-8718 • FAX (408) 286-2577



March 2, 2012

Alex Gurza, Deputy City Manager,
City of San Jose – Office of Employee Relations
200 E. Santa Clara Street
San Jose, CA 95113

Re: San Jose Fire Fighters, Local 230 & San Jose Police Officer's Association Retirement Reform

Dear Alex,

Please find the attached proposal from San Jose Fire Fighters, Local 230 and the San Jose Police Officer's Association. This offer provides substantial savings to the City both in the near and long-term. Our proposal achieves lawful, structural reform for the city, employees and the taxpayers.

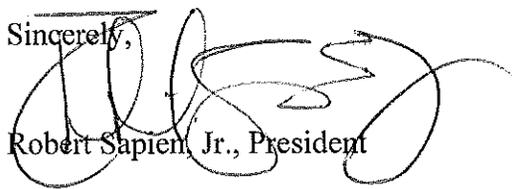
We understand from our mediation and negotiation sessions with the City that you have a concern regarding the participation rates of current employees in our "opt-in" proposal for Tier II. As such, we are offering a major pension reform enhancement contained in our offer: the **Reform Immediate Performance Guarantee**.

In short, we've structured our opt-in proposal so that **the city is guaranteed the savings of 100% employee participation**, even if the employee election rate falls short of that target. Our internal polling data showed that our participation rate would meet or exceed 66% for our proposal. **If fewer than 60% of all active members opt into Tiers II or III, we will agree to pay reductions on a sliding scale up to 16% to help achieve the savings goal** (details attached).

We believe our guarantee provides the City with the assurances it stated it needed in order to accept our proposal. **This is a viable, lawful strategy to achieve pension reform that saves the City tens of millions of dollars each and every year.**

Throughout the negotiations process we have been committed to lawful pension reform. This proposal demonstrates our seriousness to addressing this challenge to benefit the City, employees and the residents we serve.

Sincerely,


Robert Sapient, Jr., President



**SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY**

Objective: Lawful & Cost-Saving Pension Reform

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Final Average Salary	3 Year Final Average Salary	No Change
No Sick Leave Payout	No Sick Leave Payout	No Change
Sick Leave Conversion 20965	Sick Leave Conversion 20965	No Change
4th Level Survivor Death Benefit (Spouse & Children) 21574	4th Level Survivor Death Benefit (Spouse & Children) 21574	No Change
Post Retirement Survivor Allowance 21624, 21626, and 21628	Post Retirement Survivor Allowance 21624, 21626, and 21628	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	No SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change Remains 8:3 split
Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap
Military Service Credit 21024	Military Service Credit 21024	No change
Alternative Death Benefit 21547.7	Alternative Death Benefit 21547.7	No change
Term: 4 Years		

*Retiree Health Care Purchasing Protection Provision

Age at Date of Hire	Years of Service	Age at Retirement	Current Plan	Tier II (Actives)	Tier III
25	25	50	75%/ 70%	60%	50%
25	28	53	84%/ 82%	77.28%	67.76%
25	30	55	90%/ 90%	90%	81%

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY
Objective: Lawful & Cost-Saving Pension Reform

Pension Reform Performance Guarantee

To address concerns about the reliability of the member polling data and guaranteed savings, the following Reform Immediate Performance Guarantee is included with the proposal. Polling data indicated that the participation rate would meet or exceed 66% for this proposal.

If fewer than 60% of all active members opt into Tiers II or III, pay reductions based upon participation rates will result as indicated below. Calculation will be inclusive of all active members (Tier I Tier II). Beginning the first February 1 date following the establishment of the Tier II option, annual pay reductions of no greater than 4% up to 16% at the lowest participation level.

Example: If only 50% of all active members opt into the new plan then all plan members will take a 4% pay reduction in the first year and 2% in the second year.

Opt-In Rate (all actives)	Reform Immediate Performance Guarantee	Additional Savings* (Millions) estimated
<100%	--	100% Participation = \$29.9
<90%	--	90% Participation = \$26.9
<80%	--	80% Participation = \$23.9
<70%	--	70% Participation = \$21.1
<60%	4% Pay Reduction	\$7.4 Pay Reduction + \$20.1 Opt In Savings = \$27.5
<50%	6% Pay Reduction	\$11.1 Pay Reduction + \$16.1 Opt In Savings = \$27.2 Million
<40%	8% Pay Reduction	\$14.9 Pay Reduction + 13.9 Opt In Savings = \$28.6
<30%	10% Pay Reduction	\$18.6 Pay Reduction + \$11.9 Opt In Savings = \$30.5
<20%	14% Pay Reduction	\$26.0 Pay Reduction + \$9.9 Opt In Savings = \$35.9
<10%	16% Pay Reduction	\$29.7 Payroll + \$8.1 Opt In Savings = \$37.8

*In 2010, Police and Fire employees agreed to a 10% decrease in pay resulting in substantial savings in pension costs. A similar proportionate effect would occur if additional reductions are triggered by the Performance Guarantee. These additional savings are not included in these estimates.

Retiree Medical Benefit

Adopt Kaiser "High Deductible" Plan and provide a Retiree Healthcare Purchasing Protection Provision (i.e., Retirees will contribute equivalent to actives).

Adoption of this plan will result in a dramatic decrease to the Retirement Healthcare Plan's annual premium cost and a lowering of the current unfunded healthcare liability.



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425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718

March 3, 2012

Alex Gurza
200 East Santa Clara Street
San Jose, CA 95113

RE: Pension Savings Guarantee Proposal of March 2, 2012

Dear Alex,

We agree that a negotiated solution alone will not solve our long-term pension problems. The City Charter guarantees minimum retirement benefits, and the only way to change the Charter is with a vote of the people. Thus, we must go to the voters to achieve lasting change and gain control of pension costs that have already cost services and city jobs.

We will be transmitting to you Charter change language that incorporates elements of our Pension Savings Guarantee Proposal and we urge that these Charter changes be put on the June 2012 ballot so that the voters can adopt our lawful pension reform proposal and eliminate the inevitable and costly legal battle.

In addition, we would propose that the parties agree that discussions from 10:00 AM on March 3, 2012 thru 11:59 PM on March 9, 2012 cannot be used by either party for the purpose of establishing compliance or non-compliance with bargaining obligations related to the City's proposed pension charter amendment.

With the City confirming that there will be a budget surplus for the first time in many years and the city's current ballot measure proposal stating that pension reform would not be implemented until July of 2013 there is ample time to adopt our proposal and ensure that future budget deficits are eliminated.

Our guarantee of savings within our proposals provides the City certainty and eliminates the need for the legally risky path the City is currently on.

We are available at any time to meet and answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim C. Unland".

Jim C. Unland
SJPOA President

A handwritten signature in black ink, appearing to read "Robert Sapien".

Robert Sapien
Local 230 President



March 1, 2012

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VIA EMAIL AND REGULAR MAIL

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

**Re: SJPOA Request to Bargain; Information Request
File No. 038220**

Dear Alex:

We received your letter of February 27. In our reading of it, the City appears to be unwilling to bargain with the POA over the new proposed ballot measure language that was included with your prior letter of February 21. The City maintains that (1) the parties remain at impasse and (2) the ballot measure must go to the voters in June, either as the December 5, 2011 language or the new February 23, 2012 language. It seems unyielding on each issue.

It is unfortunate that your letter conditions any further dialogue on the POA making—right now—a counterproposal to the new language. Yet, as your letter implicitly acknowledges, there have been no direct negotiations about this new language. It is true, as you point out, that “the changes being recommended by the City Manager are the same changes the City proposed *in the mediation*” But when the City presented this language in mediation it did so with the express provision that the proposal would be withdrawn unless accepted in full, in which case the December 5 ballot measure language would go forward. The parties spent minimal face-to-face time discussing the new language in mediation.

The POA also believes that it is illegal for the City to limit bargaining due to its desire to finalize its ballot measure by March 6th. (See *Santa Clara County Registered Nurses Professional Association v. County of Santa Clara* (2010) 34 PERC ¶ 109 [“mere fact that the County thought the inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation”].) Thus, while the City purports to be willing to consider a further

Alex Gurza

Re: SJPOA Request to Bargain; Information Request

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counterproposal, it is requiring that ratification occur by March 6—i.e., conditioning negotiations on the parties reaching agreement and ratifying within a few days.

The reality is that there is much to bargain about. The estimations about the City's future projected pension costs are in a state of significant flux. Projections continue to lower—dramatically. In an NBC News Bay Area Report on February 23, 2012, for example, it was reported that the City's Retirement Director had received a new estimation from the Retirement System's actuaries showing that the projected cost of employee pensions in five years had dropped further to \$310 million. This is down significantly from the \$650 million where the City started (but see below), and from the \$430 million touted until recently.

The POA has significant questions about the new language. For example, the City is now, for the first time, proposing to override Section 1111 of the City Charter to the extent that impasses concerning retirement benefits will no longer be subject to arbitration. This significant change has not been the subject of our prior bargaining.

Bear in mind, too, that the Governor's Pension Proposal is designed to apply to charter cities. One city representative was heard in a public forum suggesting that any additional costs to employees as a result of the Governor's proposal could well be in addition to those added costs to employees resulting from the ballot measure. If so, that would seem to suggest that the City would garner a significant windfall. The bottom line is that the parties had minimal discussion at the bargaining table about the impact of a gubernatorial proposal that appears to be destined to appear on the statewide ballot in November. The parties should be negotiating the impact of that proposal in addition.

As the POA considers further proposals, we request the following information:

- **Any new retirement projections received by the City from either its actuaries or those of the Retirement System.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2010/11 Budget.**
- **The City's actual Total Personnel Costs, including health care and retirement, in 2010/11 Budget.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2011/12 Budget.**

- **The City's actual Total Personnel Costs, including health care and retirement, for the period July 1, 2011 to February 29, 2012.**
- **Any City-produced information, or information received by the City, supporting the assertion that \$650 million is, or ever was, a potential City retirement cost by 2015-16 or beyond. (As recently as February 9, 2012, in various television news interviews, the Mayor indicated that: "\$650 million is a reasonable, ballpark number even today.")**
- **Any documentation of the specific savings target now being sought by the City, annualized, through its various proposals related to retirement, retiree health care and healthcare. We also ask for a breakdown by each element of both the ballot measure language proposals of December 5, 2011 and February 21, 2012.**
- **Any difference in projected savings between the City's ballot measure language proposals of December 5, 2011 and February 21, 2012.**
- **The expected cost savings of the City's ballot measure language dated February 21, 2012.**
- **The expected cost savings of the Voluntary Election Program described in section 6 of the proposal dated February 21, 2012.**
- **Any City costing of the Police and Fire proposal of November 18, 2011 and December 1, 2011.**
- **Savings projections for the City's October 24, 2011 proposal to POA/Local 230 on retirement benefits for new employees.**

Please provide us with this information at the City's earliest opportunity. In the interest of a collaborative relationship, we seek it first through our right to relevant information as part of the bargaining process (rather than a formal CPRA request).

Separate and apart from the above request for information, and aside from the request to resume bargaining, please provide us with the numeric value of the savings target the City is seeking through its various retirement reforms. And please provide us with an answer to the following question: Are the City's retirement reforms, and the savings it seeks thereunder, based on

Alex Gurza

Re: SJPOA Request to Bargain; Information Request

March 1, 2012

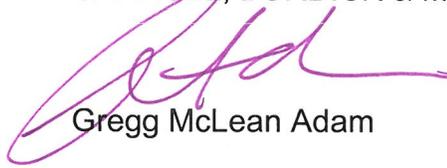
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reducing pension costs from \$650 million or some lower amount? If the latter, please provide the specific number the City is relying on.

We urge the City to rethink its rejection of further bargaining.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Jim Unland, President, San Jose POA

John Robb, Vice President, San Jose POA