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**From:** Christopher Platten [mailto:cplatten@wmpplaw.com]  
**Sent:** Wednesday, October 19, 2011 11:45 AM  
**To:** Donnelly, Gina; Rodriguez, Aracely  
**Cc:** Nancy Ostrowski  
**Subject:** IFPTE, Local 21 & City of San Jose - Pension Negotiations

Gina and Aracely:

I am confirming our discussions this morning as follows:

1. Because the City requested Local 21 to cost its proposals assuming 100% opt-in of current employees into Tier 2, all current employees would, by opting-in, waive current SRBR benefits, thus eliminating the benefit for current employees. Local 21 makes no representation that the SRBR benefit is not a vested benefit with respect to annuitants or employees who do not opt-in. Local 21 requests any explanation that the City has, or legal citations, to support a conclusion that the SRBR benefit as currently provided is **not** a vested benefit that cannot be unilaterally changed as it affects current employees or covered annuitants.
2. We appreciate the City's acknowledgement that the power point slides presented to the Council on Monday the 17<sup>th</sup> inaccurately characterized Local 21's proposal as providing a Tier 2 (opt-in) benefit of age 60 with a 10-year vesting – correctly stated, Local 21's Tier 2 (opt-in) benefit provides an increase in retirement age to 60-years with a 5-year vest. Again, this is for current employees who opt-in; not for new hires (i.e., Tier 3) under Local 21's proposal.
3. We appreciate the City's acknowledgement that the costing of proposals is impacted by the limitation of a constrained amortization period, and that the costs associated with proposals would change if a longer amortization period, say 30 years where used, as I stated to Council on the 17<sup>th</sup> is the case in Fresno County where Cheiron has recommended expansion of the current 15-year amortization to 30 years.

I also confirm the following information requests were made this morning from Local 21 to the City:

1. What is the normal cost of the City's proposal (i.e., the ballot measure), in precise percentage? So far, the City has only indicated a "range" of possible normal cost figures, which is not sufficient for determining the distance in relative positions between the parties.
2. What will it cost Local 21 members if the City's proposal is implemented?
3. We want the savings expected under the City's proposal, set forth in the same manner as was provided to the City, at its request, for Local 21's proposal, i.e., by tier, fiscal year, etc.
4. Under the City's proposal (e.g., §2), the benefits are expressly "**not intended to grant any vested rights to any post employment benefit.**" And "[t]he City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City." This means that all of the plan benefits, if not the plan itself, are terminable at-will. Is that correct?
5. Under the City's proposal, (e.g., §7(a)), the City's contribution is capped at 9% of payroll and in no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The plan now a defined contribution plan. Is that correct?
6. Under the City's proposal, if the plan is terminable at-will, there are no enforceable retirement benefits promised. Is that correct?
7. Under the City's proposal, what happens if the employees cannot afford to contribute 50% of total costs?

8. Under the City's proposal, what happens to annuitants benefits if the plan is terminated?
9. Under the City's proposal, what happens to survivors benefits if the plan is terminated?
10. Under the City's proposal, what happens to disabled employees or retirees if the plan is terminated?
11. Under the City's proposal, (e.g., §7(a)), because the City's contribution is capped and **“may be designed as a ‘hybrid plan’ consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan”** the proposal is for a defined contribution plan. Does the City agree?
12. As a defined contribution plan, doesn't the City's proposal run afoul of the same IRS Revenue Ruling (2006-43) as that confronting Orange County?
13. Under the City's proposal, if the plan does violate the Internal Revenue Code making the entire plan a non-tax qualified plan, what happens then?
14. Under the City's proposal, if a current employee opt-in to the VEP, does that employee become liable for future unfunded liabilities, and if so, is that liability capped or limited?

We look forward to  
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