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May 20, 2013

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VIA EMAIL AND REGULAR MAIL

Charles D. Sakai, Esq.
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350 Sansome Street, 3rd Floor
San Francisco, CA 94104

Re: San Jose POA's Counter-Proposal
File No. 039073

Dear Charles:

Thank you for the written "on-the-record" counter proposal, which we received on Thursday afternoon. While we were encouraged at the idea of an increased City offer to try to help us retain officers, upon closer inspection, the City's revised offer appears to be much the same as the old offer, just dressed up differently.

For example, it appears that the City has now diverted money it was previously offering in the form of a cash-out to create a one-time retention bonus. (The cash out proposal—the one area where the parties were quite close to agreement—is eliminated.) Admittedly the employees will not be required to burn their leave credits to get the money, but this looks an awful lot like a "rearrangement of the chairs."

Similarly, while we understand the City's apprehension regarding the Fiscal Year 2014-15 financial climate, the POA will not subject increases to members to a claw-back depending upon the legal fortunes of Measure B. The City moved forward on Measure B unilaterally, and the Arbitrator has already indicated his intention to assume that Measure B will go into effect.

But the POA is sympathetic to the idea of a contingency, and we offer a sensible option below that should go some way towards meeting the City's need for improving its cash flow in Year 2 *if* revenues do not continue to increase as Professor Fairlie predicted.

Because the POA agrees with Judge Flaherty's opinion that a negotiated deal is better than an arbitrator's decision, we make the following proposal, also "on-the-record," which, if accepted by the City, would constitute

the parties full Memorandum of Agreement for July 1, 2013 to June 30, 2015 (unless stated differently in the MOA), with all other not inconsistent terms of the current MOA being rolled over:

- 5% salary restoration July 1, 2013;
- 5.7% additional salary restoration July 1, 2014[1];
- 3% retention bonus November 1, 2014 (one-time);
- Annual 80-hour cash out (CTO and/or Vacation); same model as three other City unions who have it;
- CTO: employee choice; rolling 26 pay-period cash out.
- Sick leave:
  - "Old" sick leave (i.e., sick time accumulated through 6/30/13):
    - Freeze balances subject to cash out; otherwise status quo.
  - "New" sick leave (i.e., sick time accumulated after 7/1/13)[2]:
    - Last-in-First-out
    - Annual Cash-out: SFPOA model (*differences in italics*)
      - Employees must establish and maintain a core bank of sick leave hours in order to qualify for the wellness program. That core bank shall be a minimum of three hundred (300) hours. *"Old" and "New" sick leave hours shall be counted for purposes of establishing core hours.*

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[1] The 5% and 5.7% salary restoration would get police officers back close to their rate of pay in 2009. The POA has previously explained at the table why more than a 10% increase on top of current salary levels is necessary to return to 2009 levels.

[2] To clarify, this provision would apply to current and future employees.

- Once an employee has established his/her core bank of sick leave hours, he/she shall be entitled to an annual conversion of sick leave hours for cash out payment under the above conditions. If an employee utilizes thirty (30) hours or less of sick leave in a fiscal year, he/she shall be entitled to cash out up to fifty (50) hours accrued during that fiscal year. If an employee utilized more than thirty (30) hours of sick leave in a fiscal year, he/she is not eligible for any sick leave cash out.
- Sick leave hours donated to catastrophic sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.
- Payment of the cash out shall take place on an annual basis on the pay period closest to June 1 for each remaining fiscal year of this Agreement.
- The aforesaid payments shall not be considered as part of an employee's salary for the purpose of computing retirement benefits or retirement contributions.

  - Five (5) year agreement and zipper on sick leave benefits above.

- Contingency: FY14-15 if City property and sales tax revenue increases are less than 3% year-over-year from FY11-12 to FY 12-13, then the annual cash out would be suspended during the second year but would resume July 1, 2015.
- City Weapons proposal.

The POA proposal tries to balance our need to restore officer salaries and stop the bleeding of the Department, while recognizing the demands of the City's recovering finances, in three significant ways:

1. It defers large parts of the salary restoration until the second year. Using the City's methodology, this proposal saves $10 million in FY13-14 from our prior proposal.

2. The additional 3% retention bonus—note our willingness, for the first time, to accept the City's proposal for one-time money—is deferred (notwithstanding it being sorely needed now), as is the City's one-time money proposal, until the second year.

3. We are offering a contingency in Fiscal Year 2014-15, albeit one tied to objective criteria rather than the divisive Measure B. The suspension of the cash out will free up significant monies.

This proposal will be withdrawn upon the presentation of Last, Best and Final proposals by the parties on Wednesday, May 22, 2013.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

GMA:jo
cc: Jim Unland, President, San Jose POA
San Jose POA Bargaining Team