



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Alex Gurza
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 26, 2013

Approved

Date

11/26/13

**SUBJECT: APPROVAL OF THE TERMS OF AN AGREEMENT WITH THE
SAN JOSE POLICE OFFICERS' ASSOCIATION (SJPOA) AND
ADOPTION OF RELATED APPROPRIATION ORDINANCE
AMENDMENTS IN THE GENERAL FUND**

RECOMMENDATION

It is recommended that the City Council approve the following actions:

1. Adopt a resolution to approve the terms of a tentative agreement between the City and the San Jose Police Officers' Association (POA), and authorizing the City Manager to execute an agreement with a term of July 1, 2013, through December 31, 2015.
2. Adopt the following Appropriation Ordinance amendments in the General Fund:
 - a. Increase the Police Department Personal Services appropriation in the amount of \$6,507,777;
 - b. Increase the City Attorney's Office Personal Services appropriation in the amount of \$13,817;
 - c. Increase the 2014-2015 Future Deficit Earmarked Reserve in the amount of \$4,567,406; and,
 - d. Decrease the San Jose Police Officers' Association Employee Compensation Planning Earmarked Reserve in the amount of \$11,089,000.

OUTCOME

Adoption of the resolution and authorization to execute an agreement would result in a collective bargaining agreement between the City of San Jose and the San Jose Police Officers' Association (POA) for the period of July 1, 2013, through December 31, 2015.

BACKGROUND

The City of San Jose's most recent collective bargaining agreement with San Jose Police Officers' Association (POA) expired on June 30, 2013. The POA currently represents approximately 1107 full-time budgeted positions. This bargaining unit includes employees in the classifications Deputy Chief of Police, Police Captain, Police Lieutenant, Police Sergeant, Police Officer and Police Recruit.

In December 2012, negotiations with the POA on a successor agreement commenced and the parties met approximately eight (8) times, prior to participating in binding interest arbitration pursuant to Charter Section 1111. On May 6-8, 2013, the City of San Jose and the POA participated in binding interest arbitration over a successor Memorandum of Agreement (MOA). On or about July 1, 2013, the Arbitration Board issued its decision. The Arbitration Board's decision became final and effective on July 11, 2013, and resulted in a contract with an expiration of June 30, 2014. The items achieved did not require approval by City Council as the decision of the Arbitration Board is final and binding.

The Arbitration Board was required to follow revised Charter Section 1111 where there are limitations to what the Board could award. Consequently, the Arbitration Board issued a decision that there would be no wage increases and that the salary range would remain the "status quo" during the term of the award. The Board's wage decision did not reflect the City's desire to provide a wage increase to Police Officers, nor address the Police Officer retention challenges and the need to increase Police Officer compensation. Although the Arbitration Board could not award a pay increase, the arbitration decision did not preclude the City and the POA from negotiating a wage increase.

Aside from compensation, the Arbitration Board's decision awarded other items, including the City's proposal to not pay premium pay to an employee on leave, changing the process by which overtime is paid (in cash overtime versus compensatory time), elimination of sick leave payout for new employees and freezing the sick leave payout at the number of hours and hourly rate for current employees.

While the Arbitration Board's decision did not result in a wage increase for employees represented by the POA, the parties continued to negotiate given the significant concerns regarding Police Officer retention. While there have been other retention issues throughout the City in specific non-sworn classifications, and those have been and will continue to be addressed, the retention issue with Police Officers has been a bargaining unit-wide issue. For example, in Fiscal Year 2012-2013, 111 sworn police personnel left City service, 74 through resignations and 37 retirements.

The City acknowledges the challenges impacting Police Officers and the need to increase Police Officer wages, albeit in steps and over time. However, it is important to note that **all** City employees took an approximate 10% pay reduction. We recognize that this was a significant step taken by all City employees and we very much appreciate their sacrifices. The City intends to restore that 10% pay reduction to all City employees in a responsible and fiscally prudent manner. However, given the significant retention issues with employees represented by the POA, the City has had to make a decision to accelerate the pace by which this 10% is restored for Police Officers. This represents a

balancing of risks—balancing the financial risk that the City recognizes this agreement will create and the risk of losing more Police Officers thereby creating challenges in providing public safety services.

It is also important to note that the POA previously agreed to a second tier of retirement benefits for new police officers that went into effect in August 2013. This second tier will provide significant cost savings to the City in future years. The City now has a second tier in place with all bargaining units, other than the San Jose Fire Fighters, who have not agreed to a second tier and have elected to proceed to binding interest arbitration over the issue.

After continuing discussions in an attempt to reach an agreement to provide pay increases for Police Officers after the issuance of the Arbitration Board's decision, the City and the POA participated in mediation on or about November 13, 2013, resulting in a Mediator's Recommended Settlement. On or about November 19, 2013, the City and the POA signed a Tentative Agreement. The terms contained in the Tentative Agreement are consistent with those contained in the Mediator's Recommended Settlement and all other terms in the Memorandum of Agreement (MOA) between the City and the POA will remain status quo, as modified by the arbitration award that became final on July 11, 2013, including the freezing of sick leave payout and elimination of sick leave payout for new employees.

This tentative agreement restores the 10% pay reduction for employees represented by the POA over a two and a half year period. By June 30, 2015, employees represented by the POA will have their pay restored to the approximate pay levels of 2009.

The Tentative Agreement is pending ratification by the POA membership. The POA will notify the City of the ratification results prior to the December 10, 2013, City Council meeting.

ANALYSIS

A complete copy of the Tentative Agreement is attached. The following is a summary of the key provisions of Tentative Agreement.

Term

July 1, 2013 – December 31, 2015

General Wage Increase

- Effective the first pay period after ratification and Council approval, which is anticipated to be **December 22, 2013**, all employees represented by POA will receive a general wage increase of approximately 4.0%. The wage increase will not be retroactive.
- Effective the first pay period in Fiscal Year 2014-15, all employees represented by the POA will receive a base pay increase of approximately 3.33%.
- Effective the first pay period in Fiscal Year 2015-16, all employees represented by the POA will receive a base pay increase of approximately 3.33%.

Lump Sum Payment

Within two pay periods after ratification and Council approval, a one-time non-pensionable lump sum payment equivalent to approximately 2% of an employee's current annual base pay will be paid. This amount shall be pro-rated for employees hired after July 1, 2013.

Reopeners

The City and the POA agree to re-open Article 18 of the agreement to address changes in the Transfer Policies and to meet and confer over a successor agreement to the Promotional MOA that expired on June 30, 2011.

Arbitration Decision

All other terms in the Memorandum of Agreement between the City and the POA will remain status quo, as modified by the arbitration award that became final on July 11, 2013.

EVALUATION AND FOLLOW-UP

None.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website for the December 10, 2013 City Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The ongoing increased cost of the 4% general wage increase, effective December 22, 2013, is approximately \$8.1 million in the General Fund (\$4.2 million in 2013-2014). The General Fund cost of the non-pensionable lump sum payment is approximately \$2.3 million in 2013-2014. The ongoing increased cost of the 3.33% general wage increase, effective the first pay period in 2014-2015, is approximately \$6.8 million. The ongoing increased cost of the 3.33% general wage increase, effective the first pay period in 2015-2016, is approximately \$7.1 million (\$3.5 million through December 31, 2015). The ongoing costs resulting from this agreement total \$22 million and represent a 10.66% wage increase (not compounded). With the one-time lump sum payment of \$2.3 million, the ongoing and one-time costs total \$24.3 million.

There is sufficient funding in the \$11.1 million San Jose Police Officers' Association (SJPOA) Employee Compensation Planning Reserve in the General Fund to cover the increased costs of \$6.5 million in 2013-2014. Actions to appropriate this funding are recommended in this memorandum. The SJPOA Employee Compensation Planning Reserve was built to allow for a 3% ongoing wage increase in 2013-2014 and a one-time retention bonus equivalent to 4% of wages (non-pensionable). Based on the actual agreement, there will be one-time funding of \$4.6 million remaining in the SJPOA Employee Compensation Planning Reserve due to the half year implementation of the higher wage increase and the lower lump sum payment. This remaining balance is recommended to be allocated to the 2014-2015 Future Deficit Earmarked Reserve that will be brought forward for City Council consideration during the upcoming budget process.

The chart below shows the impact of the wage increases in this tentative agreement on the most recent General Fund Forecast.

**2015-2018 General Fund Forecast with 2013-2014 Adopted Budget
and POA Tentative Agreement Impacts
Incremental General Fund Surplus/ (Shortfall)**

General Fund Five-Year Forecast	2014- 2015	2015- 2016	2016- 2017	2017- 2018	Total
<i>Lose Litigation</i> <i>(\$20 M Contingency Plan Needed)</i>					
Current Forecast	(\$10.9M)	\$2.0M	(\$4.7M)	(\$6.0M)	(\$19.6M)
- Impact of POA Wage Increases	(\$3.7M)	(\$2.8M)			(\$6.5M)
- Contingency Plan Impact ¹	(\$12.2M)				(\$12.2M)
Revised Forecast	(\$26.8M)	(\$0.8M)	(\$4.7M)	(\$6.0M)	(\$38.3M)
<i>Prevail in Litigation</i> <i>(\$20 M Contingency Plan Not Needed)</i>					
Current Forecast	(\$5.1M)	\$2.0M	(\$4.7M)	(\$6.0M)	(\$13.8M)
- Impact of POA Wage Increases	(\$3.7M)	(\$2.8M)			(\$6.5M)
Revised Forecast	(\$8.8M)	(\$0.8M)	(\$4.7M)	(\$6.0M)	(\$20.3M)

¹ Assumes the 2014-2015 Employee Compensation Planning Reserve would no longer be available as a solution in the \$20 Million General Fund Contingency Plan.

Without factoring the impact of the actions contained in this memorandum, and based on the 2014-2018 General Fund Forecast with 2013-2014 Adopted Budget actions, a General Fund shortfall of \$10.9 million is currently projected for 2014-2015 if the City loses the litigation related to the Supplemental Retiree Benefit Reserve (SRBR) elimination and the implementation of the lowest cost healthcare plan changes, currently being challenged in the Superior Court of California (requiring the \$20 million Contingency Plan set aside during the 2013-2014 Adopted Budget). This shortfall would drop to \$5.1 million if the City prevails in the litigation. In 2015-2016, a slight General Fund surplus of \$2.0 million is currently projected, followed by small shortfalls of \$4.7 million in 2016-2017 and \$6.0 million in 2017-2018.

Because the wage increases in this memorandum are greater than those assumed in the most recent Forecast, there would be a negative General Fund impact of \$3.7 million in 2014-2015 and \$2.8 million in 2015-2016. In addition, the use of the 2014-2015 Employee Compensation Planning Reserve (\$12.2 million) that is currently included as part of the \$20 million General Fund Contingency Plan if the City does not prevail in the litigation would be impacted (approximately half of this funding associated with the POA would not be available with this tentative agreement and the remaining half may not be available if wage increases are approved for the City's other employee groups in 2014-2015), which would increase the projected General Fund shortfall in 2014-2015. With the wage increases in this tentative agreement, the potential General Fund shortfall in 2014-2015 is estimated at \$26.8 million if the City does not prevail in litigation or \$8.8 million if the City does prevail in litigation, and the projected General Fund shortfall in 2015-2016 is estimated at \$0.8 million.

An update to the General Fund Five-Year Forecast is scheduled to be released in February 2014. This Forecast will factor in the additional ongoing impacts of this tentative agreement, as well as updates to all revenue and expenditure projections. The General Fund budget position resulting from this updated Forecast will be addressed as part of the 2014-2015 budget process.

BUDGET REFERENCE

The table below identifies the fund and appropriations recommended to be amended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Current Appn.	Recommended Budget Action	2013-2014 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0501	Police Department Personal Services	\$281,547,100	\$6,507,777	VIII – 241	10/8/2013 Ord. No. 29320
001	0441	City Attorney's Office Personal Services	\$11,393,525	\$13,817	VIII – 18	10/8/2013 Ord. No. 29320
001	8343	2014-2015 Future Deficit Earmarked Reserve	\$12,009,000	\$4,567,406	IX – 53	10/8/2013 Ord. No. 29320

HONORABLE MAYOR AND CITY COUNCIL

November 26, 2013

Subject: Approval of Terms of an Agreement with SJPOA

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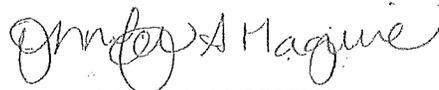
001	8404	San Jose Police Officers' Association Employee Compensation Planning Earmarked Reserve	\$11,089,000	-\$11,089,000	IX - 54	10/8/2013 Ord. No. 29320
Total Recommended Change				\$0		

CEQA

Not a Project, File No. PP10-069(b), Personnel Related Decisions.



ALEX GURZA
Deputy City Manager



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Jennifer Schembri, Deputy Director of Employee Relations at (408) 535-8154.

**2013 CITY OF SAN JOSE – POA NEGOTIATIONS
TENTATIVE AGREEMENT***

TERM

July 1, 2013 – December 31, 2015

WAGES

- 4% general wage increase effective the first pay period following ratification by the membership and approval by the City Council.
- 3.33% general wage increase effective the first pay period in Fiscal Year 2014-15.
- 3.33% general wage increase effective the first pay period in Fiscal Year 2015-16.
- One-time non-pensionable lump sum payment equivalent to 2% of an employee's current annual base pay paid within two pay periods following ratification by the membership and approval by the City Council. This amount shall be pro-rated for employees hired after July 1, 2013.

REOPENERS

The parties agree to re-open Article 18 of the agreement to address changes in the Transfer Policy.

The parties agree to meet and confer over a successor agreement to the Promotional MOA that expired on June 30, 2011.

All other terms in the Memorandum of Agreement between the City and the POA will remain status quo, as modified by the arbitration award that became final on July 11, 2013.

** This agreement is considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during these negotiations. Anything not included in the document is not part of the Tentative Agreement.*

FOR THE CITY:



Jennifer Schembri
Deputy Director of Employee Relations

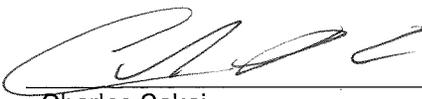
11/19/13
Date

FOR THE UNION:



John Robb
Vice President, SJPOA

11/19/13
Date



Charles Sakai
Renne Sloan Holtzman Sakai LLP

11/19/13
Date

