

May 29, 2013

Vera Todorov
President
Association of Legal Professionals (ALP)
c/o City Attorney's Office
200 E. Santa Clara Street
San Jose, CA 95113

Dear Ms. Todorov:

I am writing in response to your letter dated May 22, 2013, which reiterates the Association of Legal Professionals ("ALP") position that the "five year phase-in" does not require the parties to contribute the full Annual Required Contribution ("ARC") for Fiscal Year 2013-2014 and the information request you made verbally at the bargaining table on May 29, 2013. The five year phase was established through negotiations and implemented for Executive Management and Professional Employees (Unit 99) in 2009, prior to ALP's existence. At that time and since that time, all discussions about the five year phase-in included the fact that the parties would be paying the full ARC in the fifth year. Indeed, your letter concedes that point, suggesting only that the terms of the five year phase-in are ambiguous as to when during the fifth year the parties would begin paying the full ARC.

Your letter misinterprets the meaning of the term ARC. As its name suggests, the ARC constitutes the full amount that the funder must contribute for each year in order to fund the benefit over time. In other words, the ARC is a dollar amount. Since the City and employees must pay the full dollar amount in the fifth year, it does not matter "when" during the year they begin paying it. The later the parties start paying, the higher the biweekly payments would have to be.

In response to your information request over where in writing it says that the full Annual Required Contribution would be paid in Fiscal Year 2013-2014, please find enclosed one of the agreements reached with the bargaining units in 2009 over retiree healthcare funding, as well as the implementing resolution for the Executive Management and Professional Employees (Unit 99). The interpretation of the negotiated language is reflected in how the parties have operated since that agreement in 2009 and corresponds with the intent of the bargaining parties.

We do want to note that in a letter to ALP regarding retiree healthcare dated August 16, 2012, which is enclosed, the City did provide ALP the projected retiree healthcare contributions for

Vera Todorov
May 29, 2013
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Fiscal Year 2013-2014, assuming payment of the full ARC. Despite this communication and subsequent conversations about this at the table, ALP has just very recently raised this as an issue.

As to your suggestion that the bargaining table is not the appropriate place for negotiations over funding the retiree medical benefit, I simply disagree. If ALP is truly "completely committed to working cooperatively" with the City and other groups, then we look forward to reaching an agreement with you which will help move this process forward rather than continued correspondence over what will happen if we do not reach an agreement. The City has already proposed extending the five year phase in by another year, which is clearly what you believe should happen.

Sincerely,



Alex Gurza
Deputy City Manager

Enclosures

- c: Association of Building, Mechanical, and Electrical Inspectors (ABMEI)
- Association of Engineers and Architects (AEA)
- Association of Maintenance Supervisory Personnel (AMSP)
- City Association of Management Personnel (CAMP)
- Confidential Employees' Organization (CEO)
- International Brotherhood of Electrical Workers (IBEW)
- Municipal Employees' Federation (MEF)
- International Union of Operating Engineers, Local #3 (OE#3)
- Gary Messing

**CITY OF SAN JOSE AND CITY ASSOCIATION OF MANAGEMENT PERSONNEL
MEDIATION TENTATIVE AGREEMENT**

RETIREE HEALTHCARE FUNDING

The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this section.

The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

K
3-4-09

JS

**CITY OF SAN JOSE AND CITY ASSOCIATION OF MANAGEMENT PERSONNEL
MEDIATION TENTATIVE AGREEMENT**

It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

HEALTHCARE COST MITIGATION

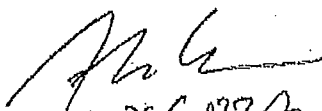
The parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

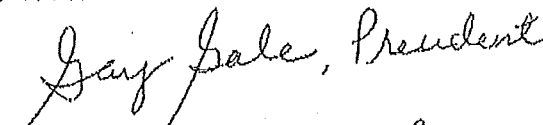
If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

This agreement is still 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 confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor agreement.

FOR THE CITY:


ALEX GUERRA
3-4-09

FOR THE UNION:


Gary Gale, President
March 4, 2009

RESOLUTION NO. 74882

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
APPROVING AGREEMENTS BETWEEN THE CITY OF SAN
JOSE AND SEVERAL BARGAINING UNITS REGARDING
RETIREE HEALTHCARE FUNDING, AND IMPLEMENTING
RETIREE HEALTHCARE FUNDING FOR UNITS 99 AND 82**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the terms of the Tentative Agreements between the City of San José and the following bargaining units are hereby approved:

- (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI)
- (2) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
- (3) Association of Maintenance Supervisory Personnel (AMSP)
- (4) City Association of Management Personnel (CAMP)
- (5) International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
- (6) Municipal Employees' Federation, AFSCME Local 101 (MEF)
- (7) Confidential Employees' Organization, AFSCME Local 101(CEO)

The City Manager is hereby authorized to execute the Agreements effective June 28, 2009 on behalf of the City.

2. That the City of San José is authorized to implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in the Unclassified Non-Management Employee Unit (Unit 82) who are in the Federated City Employees' Retirement System, effective June 28, 2009.

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3. The general terms of the Tentative Agreements and implementation on Units 99 and 82 are set out and described in the Memorandum to the Mayor and City Council dated April 7, 2009, from the Director of Employee Relations and attached as Attachment A and incorporated in this Resolution.

ADOPTED this 21st day of April, 2009, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

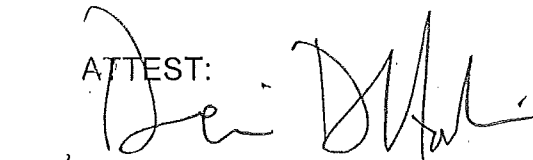
ABSENT: CHIRCO, CONSTANT.

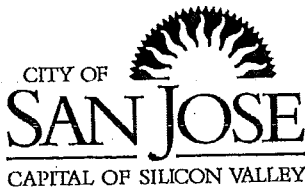
DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:


LEE PRICE, MMC
City Clerk



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: April 7, 2009

Approved

Date

4/7/09

COUNCIL DISTRICT: N/A
SNI AREA: N/A

SUBJECT: RETIREE HEALTHCARE FUNDING

RECOMMENDATION

Adoption of a resolution to provide as follows:

A. Approve the terms of agreements (attached) with the bargaining units listed below and authorizing the City Manager to execute the agreements effective June 28, 2009:

1. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
2. Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
3. Association of Maintenance Supervisory Personnel (AMSP)
4. City Association of Management Personnel (CAMP)
5. International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
6. Municipal Employees' Federation, AFSCME Local 101 (MEF)
7. Confidential Employees' Organization, AFSCME Local 101 (CEO)

B. Implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in the Unclassified Non-Management employee unit (Unit 82) who are in the Federated City Employees' Retirement System, effective June 28, 2009.

OUTCOME

Adoption of the resolution and authorization to execute the agreements that would implement retiree healthcare funding agreements between the City and ABMEI, AEA, AMSP, CAMP, IBEW, MEF and CEO, and to implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in Unit 82 who are in the Federated City Employees' Retirement System, effective June 28, 2009.

BACKGROUND

In August of 2007, City Administration brought forward to the City Council a memo on Retiree Healthcare. This memo provided information and background on the government accounting

rules related to retiree healthcare, provided information on the retiree healthcare liability, and explored options to be considered to mitigate these costs. This memo can be found at http://www.sanjoseca.gov/clerk/Agenda/080707/080707_03.11.pdf.

This memo was prompted by the Governmental Accounting Standards Board (GASB) implementing reporting standards that require state and local governmental agencies to disclose the full cost of unfunded actuarial liabilities for Other Post Employment Benefits (OPEB), such as retiree healthcare, which include medical and dental benefits. The estimated unfunded retiree healthcare liability for the City of San Jose was estimated to be as high as **\$1.65 billion**, based on the most recent actuarial analyses at that time. Factors that contribute to the amount of the liability include the level of the retiree medical benefit, escalating costs in medical premiums, the increasing number of retirees, and the City's current level of funding retiree healthcare benefits.

In response to the size of this projected liability and its potential impact, the City Council discussed retiree healthcare liability as an agenda item during two Council meetings in August of 2007. From these sessions, the City Council directed staff to:

1. Engage stakeholders in identifying strategies and alternatives to address our unfunded liability for retiree healthcare. Represented stakeholders were to include, at a minimum, employees, City Labor Alliance, Executive Management Forum, retiree associations, retirement boards, and South Bay Labor Council.
2. Continue to survey how other cities and counties are addressing their unfunded liabilities.
3. Engage experts, identified by the Administration and stakeholders, as necessary to evaluate strategies and approaches that are identified by stakeholders or have been implemented in other cities or counties.
4. Study how pre-full funding of benefits can be accomplished through a phased-in approach.¹

As one component of the Stakeholder Process, a Joint Committee on Solutions to Retiree Healthcare was developed. This committee included representatives from the Police and Fire Department Retirement Plan and the Board of Administration of the Federated City Employees' Retirement System. The report can be found at <http://www.sanjoseca.gov/retireehealthcare/documents/CommitteeReportonSolutionstoRetireeHealthcareIssuesfinalreport.pdf>

The Joint Committee on Solutions to Retiree Healthcare make numerous recommendations, two of which were:

1. The Boards should recommend to the City the adoption of recommendation no. 1 of the Public Employee Post-Employment Benefits Commission:

Public agencies providing OPEB [other post-employment benefits] benefits should adopt prefunding as their policy. As their policy, prefunding OPEB benefits is just as important as prefunding pensions. The ultimate goal of a prefunding policy should be to achieve full funding.

¹ City of San José Council Memorandum, August 28, 2007.

2. The Boards should recommend to the City the adoption of a reasonable ramp-up period, i.e., one not less than five years, to reach full funding of the annual required contribution (ARC) required by Government Accounting Standards Board (GASB) Statement nos. 43 and 45.

The City also developed a stakeholder process and held sessions for all City employees to attend. As a result of this stakeholder process, a Council Report was developed that included key themes from the stakeholder sessions. This report can be found at:
<http://www.sanjoseca.gov/retireehealthcare/documents/Attachment1toCouncilMemo061708.pdf>.
This report went to the City Council in June of 2008. The Council Memo accompanying this report can be found at:
<http://www.sanjoseca.gov/retireehealthcare/documents/CouncilMemo061708.pdf>.

This report provided that one of the themes that came out of the stakeholder process was to find a way to phase in full prefunding.

After this extensive outreach and collaboration, different options to achieve full pre-funding of retiree healthcare benefits were considered. As each option was explored, it was done within the following context:

1. Based on an outside legal counsel opinion, it was determined that retiree healthcare benefits can be considered a "vested" benefit similar to the pension benefit and the City determined that it would not be pursuing changes to retiree healthcare benefits for current employees or current retirees.
2. The level and eligibility for retiree healthcare benefits for City employees are defined in the Municipal Code. Contributions from both the City and current employees provide the funding for these benefits. The contributions are made as a percentage of pay for current employees and are part of the contribution rates for the City's two retirement plans. Contributions for retiree dental benefits are made by the City and the employees in the ratio of eight-to-three. Contributions for retiree medical benefits are made by the City and the employees in the ratio of one-to-one (50/50 split).

In order to continue discussing with the City's bargaining units the issue of retiree healthcare, the City obtained reopener agreements to enable the City to engage in coalition bargaining on the subject of retiree healthcare benefits with the following bargaining units:

1. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
2. Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
3. Association of Maintenance Supervisory Personnel (AMSP)
4. City Association of Management Personnel (CAMP)
5. International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
6. Municipal Employees' Federation, AFSCME Local 101 (MEF)
7. Confidential Employees' Organization, AFSCME Local 101 (CEO)

Upon mutual agreement from each of the above bargaining units and the City, coalition bargaining began in July of 2008, and a tentative agreement was reached with each of the seven bargaining units on March 4, 2009. The Tentative Agreements have been ratified by all seven bargaining units.

In addition, the retiree healthcare funding has been discussed with the Executive Management and Professional Employees (Unit 99) through the Unit 99 Forum and they have been notified of implementation effective June 28, 2009.

It should be noted that a similar agreement with the San Jose Police Officers' Association has already been approved by the City Council and is in the process of being implemented for June 28, 2009. The City is currently in negotiations with Operating Engineers, Local No. 3 and San Jose Firefighters, IAFF Local 230, on their successor agreements as a whole, which include the topic of retiree healthcare.

ANALYSIS

The following is a summary of the key provisions of the attached Tentative Agreements with the seven bargaining units, and a summary of the key information discussed with the Unit 99 Forum.

Retiree Healthcare Funding

Currently, retirees who meet eligibility requirements receive retiree healthcare benefits that provide for 100% of the premium for the lowest-cost plan available to active City employees. Thus, eligible retirees do not pay for any portion of the premium for the lowest-cost plan.

The San Jose Municipal Code (3.28.380) provides that contributions for retiree medical benefits shall be made by the City and employees in the ratio of one-to-one and contributions for retiree dental benefits shall be made in the ratio of eight-to-three. However, the current level of contributions by the City and employees to fund retiree healthcare are substantially less than the Annual Required Contribution (ARC) calculated by the Federated Plan actuary. Based upon the actuarial study for the Federated City Employees' Retirement System as of June 30, 2006, retiree healthcare benefits in the Federated City Employees' Retirement System are only 12% funded.

Effective June 28, 2009, the City and ABMEI, AEA, AMSP, CAMP, IBEW, MEF, CEO, Unit 99 and Unit 82 will transition from the current partial pre-funding of retiree healthcare benefits to full pre-funding of the Annual Required Contribution (ARC) over a period of five years. The Federated Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

Healthcare Cost Mitigation

In the upcoming months, the City will be discussing with the Unit 99 Forum issues related to healthcare cost mitigation.

As part of the Tentative Agreements with the bargaining units, the parties agreed to commence meeting and conferring between January 1, 2010 and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in these negotiations in a coalition bargaining process, as was done for these Tentative Agreements, with all other interested bargaining units, if any.

If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event no agreement is reached at the conclusion of negotiations and mandatory impasse procedures, but that the unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

The Tentative Agreement with ABMEI also includes a provision that after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, ABMEI has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties.

EVALUATION AND FOLLOW-UP

As noted earlier, these Tentative Agreements with the bargaining units include a provision that the City and bargaining units have agreed to commence meeting and conferring between January 1, 2010 and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

In the upcoming months, the City will be discussing with the Unit 99 Forum issues related to healthcare cost mitigation.

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 item meets Criterion 1. This memorandum will be posted on the City's website for the April 21, 2009 Council Agenda. This memo was included in the Early Distribution Council packet.

COORDINATION

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

April 7, 2009

Subject: Retiree Healthcare Funding

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COST IMPLICATIONS

The City and employees represented by ABMEI, AEA, AMSP, CAMP, IBEW, MEF and CEO and employees in Unit 82 and Unit 99 will phase-in to fully fund the Annual Required Contribution (ARC) over a five-year period. This will result in an incremental increase of up to 0.75% of pensionable pay in each fiscal year for employees, and an incremental increase of up to 0.75% of pensionable pay in each fiscal year for the City. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The maximum cost to the City in Fiscal Year 2009-2010 is approximately \$2.15 million if the incremental increase was 0.75% of pensionable pay. The amount is expected to be less than 0.75% of pensionable pay in 2009-2010, but the exact amount is pending an actuarial study by the retirement board's actuary.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

SENT VIA EMAIL

August 16, 2012

Vera Todorov
President
Association of Legal Professionals (ALP)
c/o City Attorney's Office
200 E. Santa Clara Street
San Jose, CA 95113

RE: Retiree Healthcare

Dear Vera:

As you know, the City and ALP are currently in negotiations on a successor agreement, with the previous agreement having expired on June 30, 2012. On your July 10, 2012, package proposal No. 18, entitled "Retiree Healthcare," you indicated ALP's desire to negotiate this issue separately. However, given that we are currently in bargaining on a successor agreement, we would like to continue negotiations at our current table on retiree healthcare even if, hopefully, the City and ALP come to an agreement on the remaining terms of a successor agreement.

As you have pointed out during our previous negotiation sessions, ALP has serious concerns given the projected retiree healthcare contributions for the upcoming fiscal year. The City shares these same concerns. Based on the valuation done by the Federated City Employees' Retirement System's actuary, Cheiron, in February 2012, retiree healthcare contributions are projected to be 15.50% and 16.84% for Fiscal Year 2013-2014 for the employees and the City, respectively. We are currently facing an approximate \$800.5 million unfunded liability on retiree healthcare, which is only approximately 14% funded. As you know, the City and its employees bear the costs of retiree medical 50/50.

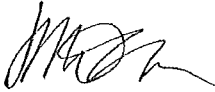
Given the significance of this issue, we would like to continue discussions at our current table regarding retiree healthcare. In addition, the City is currently crafting a response to the comprehensive package proposals submitted by ALP on July 10, 2012, and July 19, 2012.

ALP
RE: Retiree Healthcare
August 16, 2012
Page 2 of 2

We will contact you shortly to set up additional meeting times so that the City and ALP can continue negotiations.

Please let me know if you have any questions.

Sincerely,



Marco Mercado
Senior Executive Analyst

c: Richard Doyle, City Attorney
Jennifer Schembri, Assistant to the City Manager
Charles Sakai
Michelle Katsuyoshi