

June 4, 2013

Bill Pope
Business Representative
International Union of Operating Engineers, Local #3 (OE#3)
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: Retiree Healthcare Coalition Counterproposal

Dear Bill:

Thank you for the Coalition's retiree healthcare counterproposal dated June 3, 2013. Enclosed is the City's counterproposal, which we hope will lead to a tentative agreement.

We have accepted the coalition's idea of a stakeholder working group and are agreeable to delaying the meet and confer process so that stakeholder working group meetings can occur first. Given the urgency of the retiree healthcare issue, we are proposing that the stakeholder working group commence immediately and last for a defined period of time. However, we have included a provision where the City and the bargaining units can mutually agree to extend the duration of the working group.

Regarding paying the full Annual Required Contribution for retiree healthcare, the coalition has proposed an extension of the payment for two years, and the City has previously proposed a one year extension. As a compromise, we are now proposing an 18 month extension. In the City's counterproposal, employee and City contributions will each increase by .75% in July 2013 and July 2014.

The City's counterproposal continues to propose that new employees will not go into the current retiree healthcare benefit plan, but for one year the City will pay what those employees would have otherwise paid towards the unfunded liability had they been in the plan. Because of the concerns of whether or not the City would agree to continue to do this beyond the one year period, we have added language that the City continuing to pay the unfunded liability that the new employees would have otherwise paid will be part of the subsequent meet and confer process.

Given the short time frame before the Retirement Board adopts rates on June 20, 2013, we hope the compromises made in this proposal lead to a tentative agreement within the next few days so that we can ensure the tentative agreement is on the Council agenda for June 18, 2013.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alex Gurza", followed by a flourish.

Alex Gurza
Deputy City Manager

Enclosure

CITY PROPOSAL – RETIREE HEALTHCARE

Proposed Language:

ARTICLE 27 RETIREE HEALTHCARE FUNDING AND BENEFITS

- 27.1 Effective June 28, 2009, the City and the Union began ~~transitioning~~ have agreed 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~~ began on 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 3.28.3850 (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 Article.
- 27.2 The Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement ~~above~~.
- 27.3 The phase-in to the ARC shall be ~~divided in 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 which was effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each ~~increase~~ the ARC may vary upward or downward. 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 contribution rate based upon the full Annual Required Contribution, beginning on December 21, 2014. In subsequent fiscal years, the City and the plan members shall be contributing the full Annual Required

Contribution in the ratio currently provided under Section 3.28.3850 (C) (1) and (3) of the San Jose Municipal Code.

27.4 The City has established a qualified 115 trust ("Trust"). Employee contributions will begin going into the Trust in time to avoid any potential of reaching the IRS limits on the existing medical benefits account or whenever the City receives advice of Tax Counsel or ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.

~~27.4 Until such time as a Trust is established, the City and employee contributions shall be made into the existing Medical Benefits Account for as long as 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 will meet to discuss alternative funding vehicles.~~

27.5 If employee contributions are deposited into the Trust prior to receiving a ruling from the IRS that the contributions can be treated as pre-tax and the City subsequently receives an IRS determination that the contributions should be treated as post-tax, the City agrees to indemnify any employee as to any IRS liability arising solely from the contributions that were taken as pre-tax prior to the IRS determination. The City and the Employee Organization will meet and confer over an alternative trust vehicle for the prospective contributions should the IRS determine that the contributions are post-tax.

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

27.7 Employees hired into full-time benefited positions on or after the first payperiod following the effective date of the ordinance implementing this provision ("Effective Date") will not participate in or be eligible for the defined benefit retiree healthcare program. For Fiscal Year 2013-2014, the City will pay the unfunded liability contribution that these employees would have otherwise paid had they gone into the retiree healthcare defined benefit program. At the end of this period, the parties will meet and confer over whether or not the City will continue to pay the unfunded liability contribution that new employees would have otherwise paid had they gone into the retiree healthcare defined benefit program.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandums of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this agreement.

9.5 Healthcare Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party, but no earlier than January 1, 2014. This may include but is not limited to alternatives to reduce the cost of retiree healthcare benefits and options for current employees that comply with IRS regulations and whether or not the City will continue to pay the unfunded liability contribution that new employees would have otherwise paid had they gone into the retiree healthcare defined benefit program.

9.5.2 Negotiations between the City and Employee Organization shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

5.5 Health Insurance

5.5.1 Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

~~5.5.2 Effective pay date July 1, 2011, the City pays eighty-five percent (85%) of the cost of the lowest priced plan for the employee or the employee and~~

~~dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced plan. If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

5.5.2 Effective December 23, 2012, the City pays eight-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan.

Effective January 1, 2013, Kaiser Permanente Deductible 1500 HMO Benefit Plan 3800 will be available to employees represented by OE#3 in addition to the existing plan options.

5.6 Dental Insurance. The City will provide dental coverage for eligible full time employees and their dependents in accordance with one of the two available plans. Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first payperiod in payroll calendar year 2014, which starts December 22, 2013.

Side Letter Agreement

RETIREE HEALTHCARE STAKEHOLDER SOLUTIONS WORKING GROUP

PURPOSE

The City and the Coalition¹ shall form a Retiree Healthcare Solutions Working Group ("Working Group"). The goal of the Working Group shall be to develop options that lead to long-term solutions to the retiree healthcare issue.

AGREEMENT

Facilitator:

By August 1, 2013, the City and Coalition members will mutually agree on an independent person or entity that is knowledgeable in the area of retiree healthcare benefits to facilitate the Working Group.

The facilitator will facilitate the discussions, provide information to the parties, and generally assist in the development of options for long-term solutions. Upon the mutual agreement of the City and Coalition members, other subject matter experts may be engaged to assist in analyzing possible solutions.

The costs of the facilitator and any subject matter experts will be shared equally among the City and the Coalition members.

Participation:

In addition to the City and a representative from each bargaining unit in the Coalition, members of the Working Committee will include a representative of the retirees, and any unrepresented employee group(s).

Meetings:

The City and Coalition will jointly schedule Working Group sessions in coordination with the facilitator. More frequent and longer Working Group sessions will be scheduled in

¹ The San Jose Federated Labor Coalition consists of the following 9 bargaining units: Association of Building, Mechanical, and Electrical Inspectors (ABMEI), Association of Engineers and Architects (AEA), Association of Legal Professionals (ALP), 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) and International Union of Operating Engineers, Local #3 (OE#3).

the early stages of the process. The Working Group sessions will be open to employees and the public.

Timeline:

The Working Group shall agree upon a facilitator no later than August 1, 2013. The time period to schedule Working Group sessions will be from August 1, 2013, and conclude no later than December 31, 2013, unless the parties mutually agree to extend the timeframe. Negotiations between the City and the Coalition shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and the Coalition shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply. The City and the Coalition agree that this process will not supplant the meet and confer process regarding retiree healthcare.

This Agreement is tentative and shall become effective only as part of the overall retiree healthcare agreement on, and only during the term of, any agreement reached between the City and the Coalition.

FOR THE UNION:

John Mukhar President AEA, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Dale Dapp President AMSP, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Matt Farrell President CAMP, IFPTE Local 21	Date
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Michael Seville Acting Senior Representative IFPTE, Local 101	Date
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FOR THE UNION:

Frank Crusco Chief Steward IBEW, Local 332	Date
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Dan Rodriguez Business Representative IBEW, Local 332	Date
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