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February 19, 2015

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VIA E-MAIL AND U.S. MAIL

Norberto Duenas
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City of San Jose
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Re: The POA's Frustration With Your Letter of February 11th
File No.: 040326

Dear Interim City Manager Duenas:

We are in receipt of your letter dated February 11, 2015. Although your letter contained some positive components, we are perplexed and disappointed by several other components.

We were heartened by your recognition of the hardships and sacrifices police officers have suffered. Those hardships include the emotional toll of being scapegoated by the last administration and seeing their once proud department being held together by duct tape and bungee cords. The change in tone is important and noted.

We also appreciate the City's recognition that this multi-year problem will take a multi-year approach and that the current Tier 2 benefit is not competitive and *must* be improved. We agree.

But there are serious flaws in the City's proposed starting point for negotiations, which, if not corrected, will seriously impede our ability to begin a substantive dialogue. We renew our request that the City *publicly and unreservedly* acknowledge that a global settlement of all outstanding issues, including Measure B, retiree healthcare and our MOA in 2015, without going back to the ballot is our mutual goal.

Another flaw incorporated into the City's proposed starting point for negotiations is counting \$49 million in additional savings, "if Measure B were fully implemented." Measure B is not going to be fully implemented. Its centerpiece has been ruled

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Norberto Duenas
Re: The POA's Frustration With Your Letter of February 11th
February 19, 2015
Page 2

unconstitutional by a judge. Moreover, PERB is likely to throw the whole measure out, which would put us back to square one.

And, whether it is intended or not, our members' takeaway from your letter is that \$44 million of street maintenance will be carried out on the backs of city employees—all of whom are in their sixth year of concessions. As our members consider whether to stay or go (and many agencies are hiring), *is the City really still fantasizing about a further 16% pay cut through "additional contributions/opt-in program"?*

About the "additional contributions"/Savings Clause: We understand that the City representatives have expressed the belief that, absent a stipulation, on July 1, 2015, it will be *legally required* to implement a 4% wage reduction. Not so. **POA member wage rates are locked up under contract until December 31, 2015.** Even after that, the City would have to exhaust its bargaining obligations under state law and the Charter, including impasse resolution procedures. Judge Lucas addressed this at pages 34 to 35 of her ruling: "Section 1514-A ... simply recites what is already the law: that the City may adjust employee compensation "to the maximum extent permitted by law."

We also believe that a stipulation will be counterproductive to reaching a global settlement. As we have stated previously, the POA has no interest in kicking the can down the road and is fully committed to a global settlement in 2015 without going back to the ballot. *Is the City fully committed as well?*

So, as nicely as taking \$49 million and attaching a "half-off" tag to it plays as a media gimmick, it does nothing to instill confidence in our members that the City "gets it." Let's remember that the proponents of Measure B billed it as a fiscal savior for San Jose, that the measure had to be passed or the City would spiral toward insolvency. The Mayor's "half-off" offer should put to rest any belief that Measure B was necessary and confirm that the savings targets it was intended to reach were unnecessarily inflated.

It is disappointing that the new savings target proposed in your letter is still inflated and is neither fair nor accurate: savings from SRBR and retiree healthcare *from employees* are assumed and yet not credited to employees; the City share of VTA revenue from a measure that has yet to be drafted and placed on the ballot is presumptive; and new takeaways in retiree health care and workers compensation are assumed not in concept but as dollar amounts.

In addition, as we stated previously, the City has set a laudable goal of getting back to 1,250 police officers. Great. *But does it make sense to assume that will happen immediately* (when we currently have less than 1,000 officers) *and to consequently inflate the savings target?* We think not. The police department will readily admit that it will take many, many years before San Jose may be able to staff up

Norberto Duenas
Re: The POA's Frustration With Your Letter of February 11th
February 19, 2015
Page 3

to 1,250, so using 1,250 police officers when devising a savings target again unnecessarily inflates the target.

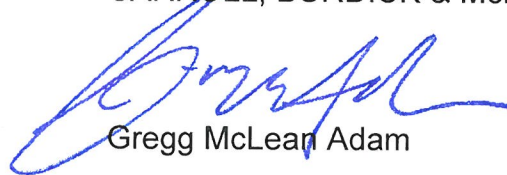
Competitiveness and stability at an affordable cost should be our framework, not the made for TV savings chart we were sent.

Finally, we want to make crystal clear that the process we are proposing requires the parties to first negotiate and agree on a global settlement ***and then***, and only then, end the litigation and eliminate Measure B through the PERB/*quo warranto* process. But both sides must commit to that concept. The City being "open to" and willing to "explore ways" of reaching a global settlement in 2015 is not good enough. The requirement of a successful negotiation on the front end before *either* side abandons court or PERB actions should provide a comfort level that allows the City to affirmatively state this mutual goal.

We await your reply.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Mayor Sam Liccardo
San Jose City Council
Paul Kelly, President, San Jose POA
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