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VIA E-Mail and US Mail

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**Re: New Employee Retirement
City of San Jose and the San Jose POA**

Dear Gregg:

We are in receipt of your letter dated October 2, 2012. The second tier was a component of our retirement reform negotiations. Additionally, per the framework signed by the San Jose Police Officers' Association (POA) in June 2011, the POA and the City mutually agreed to "negotiate concurrently on the issues of retirement reform and related ballot measure(s). Negotiation of retirement reform shall include pension and retiree healthcare benefits for current and future employees." The framework also specifically provided that the POA and the City agreed that, "(i)f the parties are unable to reach an agreement on retirement reform and/or related ballot measure(s) by October 31, 2011, the parties shall proceed to impasse." Pursuant to this framework, the POA and the City engaged in negotiations from June 2011 through October 2011. Thereafter, the parties engaged in mediation over the second tier in November 2011, and again in January and February 2012.

The City provided the POA with specific proposals for the second tier on September 15, 2011; October 24, 2011; February 10, 2012 (in mediation); and again on September 12, 2012 (this final proposal was substantively identical to the one provided in February).

Though the POA asserts that the questions in the October 2nd letter "are just some of the myriad of questions the POA has about the City's proposal," these negotiations have been ongoing for over a year. Questions about the second tier should have been presented to the City during the negotiations, or at least during the two rounds of mediation the parties engaged in between October of 2011 and June of 2012. Furthermore, the POA submitted various counter proposals related to a retirement tier for new employees during the negotiations. Given this information, then, we are at a loss as to how the POA can now claim that the parties were not "able to fully flesh out these issues." While the City is



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happy to answer to the POA's questions regarding the second tier retirement benefits, the parties remain at impasse over the second tier retirement benefit and the POA's refusal to agree to move this matter forward to interest arbitration is in violation of the City Charter.

Nevertheless, in order to best facilitate resolution of this matter, please find below information responsive to the questions raised in your October 2nd letter. Some of the answers to questions you raised can be found in the proposal provided to the POA on February 10, 2012 and September 12, 2012, which represents the maximum benefit levels permissible under the City Charter as amended by Measure B.

- ***Age: Is the age of retirement (60) fixed or can it be increased or decreased?***

As provided in the City's proposal to the POA during mediation on February 10, 2012 and again on September 12, 2012, the minimum age of retirement, without a reduced benefit, for employees under the second tier in the Police & Fire Department Retirement Plan shall be sixty (60) years of age. As this is the stated minimum in Measure B, the retirement age could only be increased.

- ***Is the DROP Program available?***

There is no current or anticipated DROP.

- ***Vested Benefits: The City contends that it has a "Reservation" of existing rights to alter the pension plan at any time. If this is the case, does it believe it can alter Age? Future Accruals? Vesting Period? Medical Benefits? Final Average Salary? All of the above? Anything else?***

The Reservation of Rights language provides notice to any new employee that if they accept employment with the City, any provision of the retirement plan is subject to modification. It should be noted, however, that the City has never taken the position that benefits which have already been earned and accrued (e.g., prior years of service) may be altered after the service is rendered; otherwise the City will look at the reservation of rights on a case by case basis.

- ***Measure B did not define the vesting period. How many years will be required for a new officer to vest?***

As provided in the City's proposal to the POA during mediation on February 10th and again on September 12th, employees in the second tier are eligible to retire "after earning ten (10) years of retirement service credit," in addition to the age requirement. This is consistent with Measure B as well as the vesting period for current "Tier 1" employees in the Police & Fire Department Retirement Plan, who



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are required to have ten (10) years of service to be eligible to leave their contributions in the plan.

- ***What number does the 9% City contribution level represent? Total employee compensation or his/her hourly rate?***

We are unclear as what information you are seeking regarding this question. Please clarify.

- ***What pay items contribute towards an employee's total compensation? Is it the same as Tier 1 officers?***

As provided in the City's proposal to the POA during mediation on February 10th and again on September 12th, final compensation for employees in the second tier "shall be base pay only, excluding premium pays or other additional compensation."

- ***If an officer is responsible for 50% of any future unfunded liability, what amortization period would the city use in to determine future contribution levels rates?***

Any amortization period will be determined and set by the independent Police & Fire Department Retirement Plan Board consistent with the City Charter and any applicable laws or regulations.

- ***Will the employees account be credited for amounts paid into the unfunded liability?***

Second tier employee contributions are expected to be treated similar to contributions made by current "Tier 1" employees and are subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

- ***Is the employee entitled to a refund of both normal and unfunded liability contributions if they separate from city employment?***

Second tier employee contributions are expected to be treated similar to contributions made by current "Tier 1" employees and are subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

- ***What interest rate would be used to calculate the monies an officer paid into the pension system should they request a payout upon separation?***



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Any interest rate will be determined and set by the independent Police & Fire Department Retirement Plan Board consistent with the City Charter and any applicable laws or regulations.

- ***Is there an annual cap on the unfunded liability amount an employee is required to make?***

No. Employees in the second tier of retirement benefits will be responsible for fifty percent (50%) of the unfunded liability.

- ***Will future pension losses be recognized as unfunded liabilities immediately or will a “smoothing” period be applied?***

Any “smoothing” period will be determined and set by the independent Police & Fire Department Retirement Plan Board consistent with the City Charter and any applicable laws or regulations.

- ***Are all new hires required to participate in the pension plan or can they opt into Social Security?***

New hires will be required to participate in the pension plan which meets the qualifications necessary so as not to go into Social Security. There is currently no option available to any employee to opt out of the pension plan.

- ***Currently due to an arbitration award in the City’s Favor in 1992, investment gains can be used to reduce the required City’s contribution rate. If the new employee plan ever becomes 100% funded, will the employees rate be reduced?***

Should the plan ever become over 100% funded, amounts over full funding of the plan may be used to reduce contribution rates.

- ***Does the City have an I.R.S. qualification letter from the I.R.S.? If not, is the City prepared to share any legal opinion as to the validity of the 2% at 60 plan provided for in Measure “B”?***

The City has a qualified determination letter from the IRS for the Federated City Employees’ Retirement System. The City is awaiting the favorable determination letter from the IRS for the current Police and Fire Department Retirement Plan. We do not have a public legal opinion regarding the provision mentioned in your question.



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- ***If this plan is not “Vested” due to the City having retained a “Reservation” of rights, is the plan tax qualified to avoid Social Security and receive “Pre-Tax” contributions?***

The City believes the Tier 2 provisions meet IRS requirements.

- ***Is there any Federal Limit on the amount an employee can contribute pre-tax into a pension fund should the employees share of the unfunded liability consume most of their future income?***

Based on information from our outside tax advisor, this answer is with respect to a governmental defined benefit plan only. It does not cover a defined contribution plan or a 457 deferred compensation plan. With respect to mandatory pre-tax employee contributions – which are essentially treated as employer contributions – there is no IRS defined benefit plan contribution limit; the total employer contributions and employee pre-tax mandatory contributions can be whatever is necessary to fund the benefit under the plan. The benefit payable to each participant in the plan is subject to the applicable Code Section 415(b) limit (the 2012 dollar limit is \$200,000, but that is reduced for different forms of benefit, different retiree ages, etc.).

Solely with respect to voluntary post-tax employee contributions, there are limits on such contributions. Essentially, the limit is the lesser of 100% of compensation (as defined under Code Section 415(c)) or \$50,000 (for 2012).

- ***What level of retiree healthcare benefits are new employees guaranteed? What rules, if any, does the City contend apply to the vesting of such benefits?***

There is currently no second tier related to retiree healthcare. New employees will be subject to the same retiree healthcare as current “Tier 1” employees.

- ***Will new employee “Retiree Healthcare” contributions be pre-tax?***

There is currently no second tier related to retiree healthcare. New employees will be subject to the same retiree healthcare as current “Tier 1” employees.

- ***Will “Retiree Healthcare” contributions be placed in the same trust fund as current employees?***

There is currently no second tier related to retiree healthcare. New employees will be subject to the same retiree healthcare as current “Tier 1” employees.



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- ***Has the City sought an opinion to determine if their new hire plan will have reciprocity with the new CalPERS 2.7 at age 57?***

No. However, the second tier does not change the reciprocity provisions of the retirement plan.

- ***Will the City provide reciprocity to lateral officers who transfer from other agencies and who were members of CalPERS or other retirement systems prior to January 1, 2013? And employees who transfer from CalPERS agencies and who first become CalPERS members after January 1, 2013 (i.e. those affected by AB 340)?***

As provided in the City's proposal to the POA during mediation on February 10th and again on September 12th, employees in the second tier "shall be eligible for the benefits under the reciprocal agreement with CalPERS that are in effect at the time of the employee's retirement."

Negotiations between the City and the POA have been ongoing for over a year and both sides have had ample opportunity to discuss the details of a second tier retirement benefit. Despite the best efforts of both sides, we have not yet come to any agreement on this matter. Per the framework mutually agreed upon in June 2011, the parties reached impasse on this issue on October 31, 2011, and we remain at impasse. As previously indicated, the City's current proposal represents the maximum benefits allowed under Measure B. Accordingly, we do not believe that there should be any reason to delay the selection of a neutral and the scheduling of arbitration.

Sincerely,

Charles Sakai

cc (via e-mail only): Alex Gurza, Deputy City Manager
Nora Frimann, Assistant City Attorney
Jennifer Schembri, Assistant to the City Manager