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VIA ELECTRONIC MAIL ONLY

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Jennifer Schembri
Director of Employee Relations
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Negotiations Over Drug & Alcohol Testing Proposal

Dear Jennifer:

The POA agrees with the City that it is time to modernize our Drug & Alcohol Testing rules. We have received and continue to review the City’s initial Drug & Alcohol Testing Proposal.

We are committed to continuing our discussions expeditiously in order to reach an agreement on this very important subject. Below are some initial questions our negotiating team has raised with regard to your initial proposal:

1. What is the City’s intent in moving to a random drug testing model? In other words, how does the City see the policy balancing between, on one hand, capturing those using, or abusing, drugs and alcohol on or off duty and, on the other, offering help to officers who are experiencing drug, alcohol, or health problems?
2. Given increasingly liberalized drug laws in California, how do we navigate between illicit drugs and the use of legal drugs and alcohol? Should the policy spell out what illegal drugs are being tested for (example: anything under 11550 HS, versus marijuana, which is (arguably) not illegal)?
3. Does the City also intend to discuss re-examining rehabilitation efforts?
4. How will a positive marijuana test be treated, given that a positive marijuana test does not equal impairment? Marijuana use is not illegal under state law by anyone over 21 and can stay in a user’s system for up 60 days.

Relatedly, how does the City propose to address marijuana use by family and co-habitants, or in topicals, supplements or other digestives, which could show up in a drug test?

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5. Questions concerning when testing occurs, including compensability for off-duty impacts. Additionally, how will the policy address long-term absences such as injuries, Sick/FMLA/CFRA, administrative leave, vacation, etc.?
6. How will the random selection process be truly random? How will employees be notified that they have been randomly selected?
7. Whether testing for those involved in accidents should be for "at fault" accidents only.

This is an important issue: both to prevent wrongdoing and assist officers in need. The POA looks forward to substantive discussions on improving our policy.

Very truly yours,

MESSING ADAM & JASMINE LLP



Gregg McLean Adam

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cc: Sean Pritchard, San Jose POA President
Steve Slack, San Jose POA Vice President
POA Negotiations Team
Tom Saggau, POA Consultant

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