



Via Email

Burke Dunphy

City Manager City of San Jose

200 E Santa Clara St San Jose, CA 95113

RE: Counter Offer

Dear Burke,

We are in receipt of City's 6/14/23 letter and the accompanying proposal. We are including with this letter our counter proposal.

We appreciate the City's recognition of the diligent efforts made by IFPTE, Local 21 during the negotiations for the successor Memorandum of Agreement (MOAs) in 2023. It is important to note that our hard work commenced well before the official start of contract negotiations. We were keenly aware that this year presents the City of San Jose with a crucial opportunity to address the pressing recruitment and retention issues that have been plaguing our organization and adversely impacting our community.

In our preparations for negotiations, we conducted a thorough survey that received responses from 639 City workers, representing approximately 70% of the employees in IFPTE Local 21's bargaining units. The survey results revealed this disheartening truth: a significant portion of employees are facing burnout and overwhelming workloads due to vacancies. IFPTE members who work at City of San Jose morale is further affected by their colleagues leaving for significantly better-paying positions in neighboring agencies. The impact of these challenges extends beyond their doing the work of multiple people, as the 1000 vacant positions that are budgeted for result in service shortcomings that affect residents and local businesses.

*“The workload that my team and I have to deal with is crushing and overwhelming. These situations are all caused by the decisions that City leadership has made over the years resulting in the current deteriorating state of the City for employees and City services for residents. Situations like these exist all throughout the City and are unsustainable. It is only a matter of time before major safety issues start to occur because of the lack of resources to maintain and provide services, support operations, or perform general upkeep of technologies/systems/etc.” -
Engineer II, DOT*

*“Employees are suffering from significant burnout and this causes mental, emotional, physical, and other problems. The City must reduce overwhelming and unsustainable workloads. This would result in improved job satisfaction and overall efficiency/performance. Employees should not feel that they can't take time off due to being the only one who can do a certain job/task.”-
Information Systems Analyst, Fire*

“The City feels like it is without purpose, values, and behaviors that are core across the organization. This does not bode well for retention or being able to deliver the best outcomes for our community.” - Enterprise Technology Manager, Information Technology

In exit surveys, the number one response to “What changes, if any, do you feel are needed to attract and retain employees?” all center on “increased pay.” Staff have stated the following regarding why they are leaving:

“Higher pay. And more staff is needed to enable manageable workloads.” - former Planner IV, Planning, Building, and Code Enforcement

“Equitable pay = hiring better employees. You will always be able to attract and retain so-so employees, but good ones are passing us by and leaving. We’re seeing that too much, so all the good ones are bailing.” -former Senior Engineer, Public Works

“Unfortunately, it comes down to compensation. It’s understood that all other local agencies pay more for the same or less work.” -former Financial Analyst, Finance

The City has remained firm in its belief that San Jose is still a competitive employer. This is simply not the case for the majority of our classifications.

We agree that San Jose’s struggle to compete with the region is not new, but the gap between San Jose and other agencies has continually widened in the time since the cuts of the Great Recession (as select other agencies received 4% increases when San Jose received 3%) and stands to further widen, as local comparators receive 5+% increases in each of the upcoming years. It is further noteworthy that the list of comparators provided in the letter produced by the City team includes agencies which are not part of the presently defined market (e.g.: Richmond and Antioch).

Our vacancy problem is further exacerbated by much shorter staff tenures where institutional knowledge and long-term community partnerships are critical in ensuring success for the City and the community we serve.

“After five years of service, the City is retaining only 60% of its employees. Said another way, the City is losing about 40% of staff after five years of service”. –Jennifer Schembri, Director of Human Resources

Hundreds of talented individuals have left our organization for more money and less work in neighboring agencies. And we are presently experiencing the Silver Tsunami of retirements we’ve all known was coming.

It is imperative that we stop the bleeding. Hiring employees faster is not enough. Lowering minimum requirements will only lead to lesser qualified applicants and is a recipe for failure. We must prioritize efforts to retain talented staff. Failure to do so will cast an even larger shadow over the future of San Jose, as fewer qualified candidates are inclined to stay, grow, and assume leadership roles within the organization. The City of San Jose is a house of cards set to fall in on itself. It is delicately held together by duct tape as dedicated employees overextend themselves to manage multiple jobs, all in a futile effort to maintain service levels.

IFPTE, Local 21 has brought forth viable, systemic solutions during the 2023 negotiations for the successor MOAs. We have communicated our proposals for retaining City employees, which include truly competitive wages, eight (8) weeks of Paid Parental Leave, restoration of non-pensionable pay, and an increase in Management Performance Program awards.

The Administration's LBFO pales in comparison to our proposals, which address the root causes of the crisis we are all presently experiencing. It appears that many of the City's contributions served as mere placeholders or addressed obligatory housekeeping matters dictated by the State. Although the City has made some progress on minor issues, which our members will undoubtedly appreciate, we had hoped for more substantial efforts in terms of concrete proposals and working collaboratively on solutions to the deeper issues truly impacting this organization.

We have made some progress by reaching tentative agreements on certain matters and maintain hope for an overall agreement. However, if the City does not accept the terms enclosed in the attached proposal, we are declaring impasse.

We want to strongly emphasize our unwavering commitment to reaching a fair resolution that prioritizes the best interests of both the City and its dedicated employees. Our goal is to ensure a mutually satisfactory and equitable agreement that takes into consideration the City's financial capacity. We are dedicated to exploring all available avenues to achieve a resolution where outcomes will #StaffUpSanJose.

Sincerely,



Elizabeth Kamya

CC:
Mayor and City Council
Jennifer Maguire, City Manager
Jennifer Schembri, Office of Employee Relations
IFPTE Local 21 Bargaining Team

Encl: embedded documents



Proposal made by IFPTE Local 21 to the City of San Jose

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Submitted on: 06/16/2023

ARTICLE x.x.xx DEFINITION OF THE MARKET

10.X.1 Comparable classifications in cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco and Alameda Counties serving populations of 100,000 or more will be used to compare classifications. Population figures will be used from the U.S. Census Bureau.

10.X.2 Compensation information from the private sector will be gathered from existing published sources, and used to supplement public sector data as deemed appropriate.

10.X.2 Based on the April 1, 2020, U.S. Census Bureau, 2020 Census of Population, the following agencies currently meet the definition of the market:

Alameda County	Berkeley
Concord	Contra Costa County
Daly City	Fremont
Hayward	Oakland
San Francisco City/County	San Mateo County
Santa Clara	Santa Clara County
Sunnyvale	Richmond
Antioch	San Mateo (City)
Mountain View	Milpitas

10.X.4 To more accurately reflect the job market that San Jose competes in as an employer, Santa Clara County and the other cities in the above list that are within Santa Clara County shall be counted twice for the purposes of determining average market wages. The City will also only use “pensionable wages” in market average calculations.

10.X.5 When conducting a salary survey, if less than six (6) classification matches are available, the City may utilize classifications at jurisdictions outside of those listed in Article 10.X.2, which may include special districts, as appropriate and will obtain feedback from the Union in these cases.

10.X.6 If the Union believes that a long-term vacancy issue exists in an IFPTE-represented classification, the Union may request information and/or raise these matters for discussion at a Labor Management Committee meeting.



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Submitted on:

06/15/2023

Working in a Higher Classification

Article 10.5.2 (AEA & CAMP), Article 10.8.2 AMSP

As an alternative to conducting an external recruitment to fill a vacant position (or a position which becomes vacant as a result of this expedited internal process), a department may solicit interest (via department-wide email) from all existing departmental employees regarding the opportunity to perform a higher-class assignment. Those employees who 1) respond competitively to the solicitation and 2) demonstrate they will meet Minimum Qualifications for the higher classification within 12 months of the date of solicitation shall be invited to an internal interview emphasizing technical competency and fit to the work group. The selected candidate from this internal process may then work in a higher classification for a period of time not to exceed 12 months (defined as 2,080 hours of HCM). After an acting higher class period of at least six months (1,040 hours of HCM) and before the expiration of the higher class assignment (2,080 hours of HCM) the department may appoint the assigned employee to the permanent role. If choosing to not appoint the assigned employee to the permanent role, the department will post an external recruitment in accordance with the City's established procedures by the end of the 12-month period. The Human Resources Department will keep track of the number of appointments resulting from this expedited internal process and provide annual status reports to the Union regarding utilization of this option.



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Submitted on:
06/15/2023

City-Paid Parental Leave:

For eligible births, adoptions, or foster care placements that occur during the term of the agreement and dating back to January 1, 2023, full-time employees will receive a maximum total of three hundred and twenty (320) hours of continuous paid time off and shall be eligible to use up to a maximum total of one-hundred and twenty (120) hours of their available sick leave for continuous or intermittent City-Paid Parental Leave reasons. An employee shall only be eligible for one instance of City-Paid Parental Leave per unique birth, adoption, or foster care placement, regardless of whether a twelve (12) month rolling period would cross multiple payroll calendar years.

Example: An employee experiences a birth, adoption, or foster care placement on September 23, 2023. The employee will be eligible for a maximum total of three hundred and twenty (320) hours of continuous paid time off and will be eligible to use a maximum total of one hundred and twenty (120) hours of their accrued sick leave balances for continuous or intermittent leave. If the employee has used a portion or all of their City-Paid Parental Leave prior to the end of the Payroll Calendar Year 2023, the portion that was used shall not be refreshed and shall not be available for use in Payroll Calendar Year 2022, as the employee is eligible for a maximum total of three hundred and twenty (320) hours of continuous paid time off per unique birth, and shall be eligible to use up to a maximum total of one-hundred and twenty (120) hours of their available sick leave for continuous or intermittent City-Paid Parental Leave reasons per unique birth.

In situations of one birth with multiple children (e.g., twins) or where multiple children are adopted or are placed in the foster care of an employee at the same time, this shall be treated as one event.

An employee shall be eligible for a maximum of one instance of the three hundred and twenty (320) hours of continuous City-Paid Parental Leave per payroll calendar year.



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ARTICLE 11.9 MANAGEMENT PERFORMANCE PROGRAM

Employees represented by IFPTE Local 21 are covered under the Management Performance Program, Section 3.3.2 of the City Policy Manual. Effective 2023-2024, represented employees will receive performance-based pay increases of 2% (Satisfactory), 2.5% (Commendable), or 3% (Outstanding). If at the top of their salary range, the employee will receive a non-pensionable lump sum bonus equivalent to the % increase they would have received, given their performance.



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Article X.X EMERGENCY ACTIVATION RESPONSE

X.X.X California Government Code, Title 1, Division 4, Chapter 8, Sections 3100 et seq., requires all public employees to provide disaster service activities as may be assigned to them by their superiors or by law. San Jose Municipal Code, Chapter 8.08 provides that the City Manager, while in the role of the Director of Emergency Services, has the authority to require emergency services of any City officer or employee.

X.X.X Where feasible and as determined by the Director of the Emergency Operations Center, employees shall not be activated for Emergency Operations Center shifts of 12+ hours for more than **three** consecutive days. Where feasible, after working **three** consecutive days of 12+ hours in emergency response, the represented employee shall receive a minimum of 36 consecutive hours off before resuming emergency response activities.

X.X.X The Emergency Operations Center's staffing list shall be updated on a semi-annual basis. **The Office of Emergency Management** will endeavor to have a designated back-up for every position on the staffing list **and a designated list of field outreach leads. In the event that a back-up is not identified for a represented employee performing emergency response functions, the Director of the Emergency Operations Center, or their designee, shall identify a back-up within 48 hours of activation.**

X.X.X In the event a represented employee reports unpaid disaster management (UDM) time and their time card is approved, their vacation accrual cap will be immediately increased by 24 hours.



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06/15/2023

ARTICLE XX OVERPAYMENTS OF COMPENSATION

When the City determines an overpayment has been made to an employee, it shall notify the employee of the overpayment and afford the employee an opportunity to respond prior to commencing recoupment actions. **The City will endeavor to reach mutual agreement with the employee regarding repayment terms, which may be in lump sum cash payment(s) or installment(s) through payroll deduction(s).** Absent mutual agreement on a method of reimbursement within 30 days **of being notified of the overpayment**, the City shall proceed with recoupment **via payroll deductions over a number of pay periods equivalent to the term of overpayment.** In no event shall amounts deducted from payment of salary or wages exceed **5%** of the employee's net disposable earnings.

xx.x An employee who separates from **City** employment prior to full repayment of the amount owed **the City** shall have any money owed **the City** withheld **from their final paycheck(s).** If the amount of money owed **upon separation** is insufficient to provide full reimbursement to the City, the City shall have the right to exercise any and all other legal means to recover the additional amount owed.



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10.5 Shift Differential

Eligible employees, as defined herein, **regularly assigned to work a swing shift** shall be paid a Shift Differential of ~~\$1,502.25~~ per hour for each eligible hour, as defined herein, to the nearest fifteen (15) minutes, of work performed. **Eligible employees, as defined herein, regularly assigned to work a graveyard shift shall be paid a shift differential of \$2.50 per hour, as defined herein, to the nearest fifteen (15) minutes, of work performed.**

10.5.1 To be eligible for payment of Shift Differential, an employee must be assigned to an on-going, regular shift of eight (8) hours or more which is regularly scheduled to start between the hours of:

- 2:00 p.m. and 11:59 p.m. (i.e. swing shift)
- 12:00 midnight and 5:59 a.m. (i.e. graveyard shift)

If the employee's shift starts within the time period defined above, the employee shall be compensated with Shift Differential for the number of hours actually worked.

10.5.2 Employees Assigned to a Twelve (12) Hour Shift at the Regional Wastewater Facility. Employees in AMSP represented classifications at the Regional Wastewater Facility whose ongoing regular shift of eight (8) hours or more is a regularly scheduled day shift of 6:00am to 6:00pm shall be eligible for a Shift Differential of ~~\$1,502.25~~ per hour for each hour, to the nearest fifteen (15) minutes, actually worked by the employee between the hours of 2:00pm and 6:00pm.

10. 5.2 Should any other non-sworn union reach an agreement that results in an increase to the shift differential during the term of this agreement, the city agrees to increase the graveyard and swing shift differential by the same percentage.



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10.X BILINGUAL PAY

10.X.1 To be eligible for a bilingual premium pay, an employee must meet at least one of the following eligibility requirements and must be certified as bilingual for oral communication, written translation or sign language duties according to the current established procedure.

10.X.1.1 The employee is currently assigned to a position selectively certified based on bilingual ability by the Director of Human Resources, or his/her designee, or

10.X.1.2 The duties currently assigned and currently being performed by an employee have been designated by the Department Director or his/her designee as requiring utilization of a non-English language on a regular basis. Each department is responsible for ensuring that employees receiving a bilingual pay premium pay meet the requirements set forth herein.

10.X.2 Each full-time employee who meets the above eligibility requirements shall be compensated for performing oral communication, or sign language duties, ~~at the rate of \$29.00 per biweekly pay period~~ and for performing written translation duties at the rate of \$40-\$60.00 per biweekly pay period for each pay period actually worked.

10.X.3 Each part-time benefited employee who meets the above eligibility requirements shall be compensated for performing oral communication, or sign language duties, ~~at the rate of \$19.00 per biweekly pay period~~ and for performing written translation duties at the rate of \$30-\$50.00 per biweekly pay period for each pay period actually worked.

10.X.4 Each part-time unbenefited employee who meets the above eligibility requirements shall be compensated for performing oral communication, sign language duties, and written translation duties at the rate of \$0.50 per hour.

10.X.5 If an eligible employee is on paid leave for a period of one full pay period or more, the employee will not receive bilingual pay for that period.

10.X.6 In the event that an eligible employee is refusing to provide interpretation or translation services for which they are certified, removing them from the list will be at the discretion of the Department Director or designee. In the event the employee is removed from the list, they shall cease to receive bilingual pay. Reinstatement to the list will likewise be at the discretion of the Department Director or designee.



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Submitted on:
06/15/2023

**SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND**

**IFPTE, LOCAL 21, THE ASSOCIATION OF ENGINEERS ARCHITECTS (AEA),
IFPTE, LOCAL 21, THE ASSOCIATION OF MANAGEMENT PERSONNEL (AMSP),
IFPTE, LOCAL 21, AND THE CITY ASSOCIATION OF MANAGEMENT PERSONNEL
(CAMP),**

The Union will join the City at twelve (12) annual in-person recruitment events or “Hiring Pipeline Activities.” including but not limited to San José State University Related Engagements like New Graduate Bootcamp, Business, Financial Services, and Logistics Job/Internship Fair, Veterans Day Celebration, African American Community Service Agency Career Fair, Work2Future Career Fair, Cristo Rey Jesuit High School Expo Event, or any others identified by the City to help recruitment and retention efforts and to give credibility to the City as a good employer.

This Agreement is considered part of the tentative agreement for a successor MOA between the parties. This Agreement shall become effective only as part of the overall tentative agreement for a successor MOA, when signed by all parties below, ratified by the union and approved by the City Council.

Burke Dunphy Date
Lead Negotiator
City of San José

Elizabeth Kamya Date
Union Representative
IFPTE, Local 21

Florin Lapustea. Date
President, AEA

Jesse Perez Date
President, AMSP

Julie Jennings Date
President, CAMP



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06/15/2023

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

IFPTE, LOCAL 21, THE ASSOCIATION OF ENGINEERS ARCHITECTS (AEA),
IFPTE, LOCAL 21, THE ASSOCIATION OF MANAGEMENT PERSONNEL (AMSP),
IFPTE, LOCAL 21, AND THE CITY ASSOCIATION OF MANAGEMENT PERSONNEL
(CAMP),

Flexible Workplace Policy

The City has a Flexible Workplace Policy, which governs the rules and procedures regarding approving remote work agreements between the City and employees. This policy has been part of the City Administrative Policy Manual since July 13, 2015. The parties agree to add the following language to the policy:

If an employee's Flexible Workplace Agreement is revoked due to **previously communicated** performance concerns, the department shall provide the employee with **written** performance targets. The employee's performance shall be evaluated over a period of 90 days following the revocation of the Flexible Workplace Agreement. If the employee has consistently met the performance targets provided by the department over the period of 90 days, then the employee shall be eligible to resume their previously agreed to Flexible Workplace Agreement, absent any operational needs from the department.

The parties also agree that the City Administrative Policy Manual, Section 4.2.14, Flexible Workplace Policy shall remain in effect through the expiration of the successor memoranda of agreement between the City and AEA, AMSP, and CAMP. This Agreement is considered part of the tentative agreement for a successor MOA between the parties. This Agreement shall become effective only as part of the overall tentative agreement for a successor MOA, when signed by all parties below, ratified by the union, and approved by the City Council in open session.



Proposal made by IFPTE Local 21 to the City of San Jose

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Submitted on:
06/15/2023

SIDE LETTER ON CLASSIFICATION REVIEW

In order to strengthen recruitment and retention, the City agrees that within six (6) months from execution of an agreement on a successor MOA, the City will have completed the classification compensation analysis for employees represented by IFPTE Local 21. The City's review shall include, but not be limited to, classification structure and/or compensation of the following classifications:

CAMP:

- Department IT Manager
- Development Officer Series
- Information Systems Analyst
- Planner IV
- Principal Engineering Tech
- Principal Property Manager
- Senior Analyst
- Senior Librarian
- Senior Property Manager I/II
- Supervising Applications Analyst
- Zoo Manager

AMSP:

- Air Conditioning Supervisor
- Airport Maintenance Supervisor
- Automotive Equipment Specialist
- Building Maintenance Superintendent
- Equipment Maintenance Supervisor I/II
- Food & Beverage Services Supervisor
- Maintenance Contract Supervisor
- Maintenance Superintendent
- Maintenance Supervisor
- Mechanical Parts Supervisor
- Painter Supervisor – Water Pollution Control Plant
- Parking & Traffic Control Supervisor
- Parks, Recreation, & Facilities Supervisor
- Sr. Automotive Equipment Specialist
- Supervising Park Ranger
- Supervisor, Trades
- Wastewater Maintenance Superintendent
- Wastewater Mechanical Supervisor I/II
- Wastewater Operations Foreperson I/II
- Wastewater Operations Superintendent I/II



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06/15/2023

**SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
ASSOCIATION OF ENGINEERS AND ARCHITECTS (AEA), IFPTE, LOCAL 21**

To address staffing shortages at the Regional Wastewater Facility, Stantec began providing engineering and project management services in October 2013. The intention was for the contract to last only five (5) years while City staffing recovered, and the agreement was structured with the intention that consultant functions transition back to City staff.

Stantec committed to training programs and plans to transition the work back in-house by 2018. These transition plans have not come to full fruition. The Environmental Services Department (ESD) has transitioned several **non-represented** ~~some~~ positions to City staff thus far, with the greatest strides in filling the Deputy Director, multiple Principal Engineer positions, and core programmatic level positions. However, despite numerous recruitment efforts over the years, the department has continued to have challenges in hiring Wastewater Facility Senior Engineers.

The City and IFPTE, Local 21 have agreed to the following principles, standards, and process for contracting-out and the services being provided through the Stantec Consulting Services Agreement:

1. The parties commit to delivering ESD's CIP projects with the highest quality and on time and on- budget.
2. The parties commit to use City staff to perform engineering, planning, architectural, construction management, program management, and project management work where feasible and practicable given the needs of the CIP **and availability of appropriate City staff with necessary specialized expertise.**
3. The parties agree that the plan is to phase out consultants and transition consultant positions to City staff.
4. The parties recognize that contracting out select CIP work may be necessary for the following reasons:
 - a. The City may contract-out specialized services for which City staff do not possess the necessary specialized skills or experience.
 - b. The City may contract-out to address temporary peak workloads. Temporary peak workloads are situations where City staff are capable of providing needed services, but sufficient staff are not available to meet project deadlines and the work is not forecasted

to be sufficient to sustain the hiring of additional, qualified permanent employees without risk of layoff or displacement.

The parties further agree that over the life of this Stantec Consulting Services agreement, contracting of Senior Engineer work will not be expanded beyond functions provided by three existing consultants. These consultants should be allowed to complete work on specific projects that they are currently working on, but not be moved to additional projects. Additionally, the priority will be to fill vacant **Wastewater Facility** Senior Engineer positions with City staff as soon as practicable. If these positions can be filled, the three remaining consultants in these roles will be transitioned to City staff by December 2026. ~~If these positions cannot be filled, the use of consultants for any roles and specific projects may continue.~~

In order to intentionally ensure that all Stantec employees are transitioned out by 2026 and the vacant Senior Engineer positions can be filled within three years, the parties agree that they will hold ongoing discussions with labor groups as necessary, and no less than quarterly, to discuss recruitment plans and promotional development opportunities for existing staff.

This Agreement is considered part of the tentative agreement for a successor MOA between the parties. This Agreement shall become effective only as part of the overall tentative agreement for a successor MOA, when signed by all parties below, ratified by the union and approved by the City Council.

FOR THE CITY:

Burke Dunphy Date
Lead Negotiator
City of San José

FOR THE UNION:

Elizabeth Kamya Date
Union Representative
IFPTE, Local 21

Florin Lapustea. Date
President, AEA