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June 26, 2023

Via Email
John Tucker
1150 N. First Street #101
San Jose, CA 95112

Re: MEF's Declaration of Impasse

Dear John:

The City is in receipt of your letter, dated June 19, 2023, in which the Municipal Employees' Federation, AFSCME, Local 101 (MEF) declared that MEF and the City have reached an impasse regarding negotiations on a successor Memorandum of Agreement (MOA) between the parties. The City is encouraged that MEF is amenable to mediation as part of the impasse process, and we are hopeful that the involvement of a neutral mediator may help the parties reach an agreement. The City will contact the California State Mediation and Conciliation Service to obtain a list of potential mediators and provide this list to MEF to begin this process.

In reviewing MEF's June 19, 2023, letter there are numerous statements that were included that the City believes are inaccurate and we believe it is important to highlight some of these as they remain important aspects in these negotiations, particularly as we embark on the mediation process:

- You state, "Unfortunately, the City's team has not represented many of the Union's core proposals and justification in the most accurate way and so we are including a position overview in this document as well in hopes that it clears up any confusion." We are unclear what you are referring to here; however, the City posted the document provided by MEF in its entirety on the City's website following our negotiation session on April 19, 2023.

- You reference the City's revised Five-Year Forecast that was cited in the City Manager's 2023-2024 Budget Message, which forecasted an estimated $35.3 million ongoing budget surplus for Fiscal Year 2023-2024. As you know, the City Council adopted the City's budget based on their priorities on June 13, 2023, and this action has designated uses for this surplus. As such, any agreement between the City and a bargaining unit that provides any kind of compensation or benefits in excess of those assumed in the budget would require reopening the budget to incorporate budget rebalancing to offset that difference. Further, as you are aware, while there was a surplus for Fiscal Year 2023-2024, a shortfall was projected in 2024-2025 with essentially no or very small incremental surpluses over the remaining three years of the Five-Year Forecast.

Sloan Sakai
ATTORNEYS AT LAW

- You state that the City has "a forecasted 178-million-dollar salary savings this year," and that the City is "underbudgeting" vacancy savings. The City has no such forecasting as is evidenced by the fact that this is not included in any of the City's budget documents. It is important to note that there is a certain amount of vacancy savings assumed every year within and across departments that is built into the budget. In addition, many vacancies within the City are backfilled in some manner, including, but not limited to, elevated overtime expenditures, temporary staffing, and higher-class pay. Further, any expenditure savings beyond the assumptions included in the Fire-Year Forecast are one-time savings that cannot be relied upon to fund ongoing wage increases.

- Throughout these negotiations the MEF bargaining team has referenced "restoring" or "reinstating" the 5.00% ongoing non-pensionable compensation increase that MEF agreed to in 2018. As you know, in 2018 MOA negotiations the unions informed the City that staff wanted to maximize take home pay in those negotiations. Based on this feedback, the City provided two options – (1) where the unit would receive a 3.00% pensionable general wage increase in FY 2018-2019, and (2) where the unit would receive a 5.00% ongoing non-pensionable compensation increase where neither employees nor the City would pay pension contributions on this income, and where this pay would be considered part of base pay for the purposes of surveys and premium pays. All units aside from OE#3 elected to take the 5.00% ongoing non-pensionable compensation increase. While MEF has asserted that the conversion of this pay from non-pensionable to pensionable would not significantly impact the unfunded actuarial liability, this is false. The Federated Retirement System is currently 57% funded, and any wage increases or changes in pensionable pay above the amount assumed by the Board will impact the plan's unfunded liability. In fact, the City's actuary estimates that this impact would amount to approximately $8.5 million for MEF alone, and before considering any further general wage increase for FY 2023-2024.

- While you have stated that the City's Paid Parental Leave Program is "wrong, discriminatory against women, anti-family, and out of touch with City values and what other regional public and private agencies provide," the City's proposal provides 4 weeks (160 hours) of City-paid time, and the ability to use up to 4 weeks (160 hours) of sick leave, for a total of 8 weeks (320 hours) of Paid Parental Leave time. This is in addition to any other leave entitlements that employees may have under the City's Leave of Absence Policy. What the City is proposing matches or exceeds what other public agencies are offering for Paid Parental Leave. This underscores the City's acknowledgement of the benefits of providing such time of for baby bonding purposes to support employees with families.

- Lastly, you provided that the City's market survey was inaccurate; however, there was no information related to where inaccuracies were found. As you know, the City's comparator agencies as agreed to by MEF and are contained in the MEF contract, are comprised of cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco, and Alameda Counties that serve populations of 100,000 or more based on population figures from the U.S. Census Bureau. These have been the City's longstanding market comparators, and while the parties have exchanged proposals related to potential changes to this list in these, you are well aware that the comparators used in the City's surveys are those that are agreed to by MEF and contained in the MEF MOA.

  Based on the enclosed market comparator survey, which is based on MEF equivalent units in the marketplace, the City has found the following:

  - In Fiscal Year 2022-2023, the City's 4.50% general wage increase was greater than or equal to 10 of 16 agencies in the marketplace.
  - The City's Last, Best, and Final Offer of a 5.00% general wage increase in Fiscal Year 2023-2024 is greater than or equal to 12 of 13 agencies in the marketplace who have settled wage increases for that year, and more than 0.60% higher than the average of those agencies.
  - The City's Last, Best, and Final Offer of a 4.00% general wage increase in Fiscal Year 2024-2025 is greater than or equal to 6 of 8 agencies in the marketplace who have settled wage increases for that year, and approximately 6 hundredths of a percent less than the average of those agencies.
  - There are only 4 agencies in the marketplace with settled wage increases in Fiscal Year 2025-2026, and it is too early to know what the average of those increases will look like once other jurisdictions reach agreements including wage adjustments for that fiscal year.

Agency	Unit(s)	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
Average		3.72%	4.37%	4.06%	4.13%
Actual and Proposed San Jose General Wage Increases	MEF	4.50%	5.00%	4.00%	3.00%

The wages agreed to by many of the City's other non-sworn unions that became effective on June 25, 2023, and which are consistent with those that have been offered to MEF, AEA, AMSP and CAMP in the City's Last, Best and Final Offers are greater than or on par with the agencies within the marketplace, and to say that the City is offering wages that are not is simply inaccurate.

Again, we look forward to engaging further with MEF in the mediation process and in a good-faith attempt to reach an agreement on a successor MOA.

Sincerely,

Burke Dunphy

Enclosures: Updated General Wage Survey for Comparator Jurisdictions

cc: Jennifer Schembri, Director of Employee Relations and Human Resources
Elsa Cordova, Assistant to the City Manager

General Wage Increase Survey
Marketplace of Agencies

Agency	Unit(s)	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026	Sources
San Francisco	SEIU	5.25%	4.81%	-	-	SEIU MOA (Page 44 of the PDF)
Oakland	SEIU	5.00%	5.00%	4.00%	-	SEIU Article
Fremont	CFEA	5.00%	5.00%	4.00%	-	CFEA MOA (Page 11 of the PDF)
Hayward	SEIU	3.00%	5.00%	-	-	SEIU MOA (Page 35 of the PDF)
Sunnyvale	SEIU	6.00%	4.00%	3.50%	3.50%	SEIU MOA (Page 19 of the PDF)
Concord	Teamsters	3.00%	-	-	-	
Santa Clara (City)	Units 5/7/8	5.00%	-	-	-	Side Letter with Units 5/7/8
Berkeley	SEIU	3.00%	1.00%	-	-	SEIU MOA (Page 20 of the PDF)
Richmond	SEIU	0.00%	5.00%	4.00%	4.00%	SEIU MOA (Page 10 of the PDF)
Antioch	Confidential Unit	2.00%	4.00%	3.00%	-	Confidential Unit TA (Page 4 of the PDF)
San Mateo (City)	SMCEA	4.00%	4.00%	-	-	SMCEA TA (Page 1 of the PDF)
Daly City	Teamsters	4.00%	4.00%	4.00%	-	MOAs are not updated. Data is per Daly City HR.
Alameda County	SEIU	3.25%	6.00%	5.00%	4.00%	SEIU Memo (Page 103 of the PDF)
Contra Costa County	AFSCME	5.00%	5.00%	5.00%	5.00%	AFSCME MOA (Page 17 of the PDF)
San Mateo County	SEIU	3.00%	4.00%	-	-	SEIU MOA (Page 17 of the PDF) AFSCME MOA (Page 13 of the PDF)
Santa Clara County	SEIU	3.00%	-	-	-	SEIU MOA (Page 37 of the PDF)
Average		**3.72%**	**4.37%**	**4.06%**	**4.13%**	
Actual and Proposed San Jose General Wage Increases	**MEF**	**4.50%**	**5.00%**	**4.00%**	**3.00%**	

Additional Notes:
General Wage Increases shown above represent the highest increase between the agency and the units surveyed.
San Francisco's FY 23-24 increases are in 2 parts (2.50% on 7/1/23, and 2.25% on 1/6/24) and are contingent on the following: "if the March 2023 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2023-2024 that exceeds $300 million, then the base wage adjustment due on July 1, 2023 [and on January 6, 2024], will be delayed by approximately six (6) months"
Updated City of Santa Clara to 5.00% in FY 22-23 based on side letter with Units 5/7/8. (6/15/23)

Data as of June 15, 2023