



COUNCIL AGENDA: 9/25/18
FILE: 18-1259
ITEM: 3.3

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri
Margaret McCahan

SUBJECT: SEE BELOW

DATE: September 12, 2018

Approved

D. D. S. L.

Date

9/13/18

SUBJECT: APPROVAL OF THE TERMS OF AN AGREEMENT WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 3 (OE#3) FOR THE TERM OF OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2021

RECOMMENDATION

It is recommended that the City Council approve the following actions:

- (a) Adopt a resolution approving the terms of a collective bargaining agreement between the City and the International Union of Operating Engineers, Local Union No. 3 (OE#3) for the term of October 1, 2018 through September 30, 2021, and authorizing the City Manager to execute the agreement with those terms.

OUTCOME

Adoption of the resolution and authorization to execute an agreement would result in a collective bargaining agreement between the City of San José and the International Union of Operating Engineers, Local Union No. 3 (OE#3) and authorize the City Manager to execute an agreement with a term of October 1, 2018, through September 30, 2021 with those terms.

BACKGROUND

The City of San José's collective bargaining agreement with the International Union of Operating Engineers, Local Union No. 3 (OE#3) will expire on September 30, 2018. OE#3 currently represents approximately 720 full-time equivalent positions. This unit includes employee job classifications such as Maintenance Worker I/II, Parking Traffic Control Officer, Maintenance Assistant, Groundworker, and Wastewater Operator I/II/III.

In April 2018, negotiations with OE#3 on a successor agreement commenced and, on or about August 30, 2018, the City and OE#3 reached an overall Tentative Agreement on the terms to be contained in the successor Memorandum of Agreement (MOA) between the City and OE#3.

The Tentative Agreement is pending ratification by the OE#3 membership. OE#3 will notify the City of the ratification results prior to the September 25, 2018, City Council meeting.

ANALYSIS

A complete copy of the Tentative Agreement is attached (Attachment A). The following is a summary of the key provisions of the Tentative Agreement.

Term	October 1, 2018 through September 30, 2021
Ongoing Non-Pensionable Compensation Increase	Effective September 23, 2018, all salary ranges for employees holding positions in classifications assigned to OE#3 shall receive an approximate 5% ongoing non-pensionable compensation increase.
General Wage Increase	Effective June 30, 2019, all salary ranges for employees holding positions in classifications assigned to OE#3 will receive a pensionable base pay increase of approximately 3.0%. This will result in both the top and bottom step of the pay range being increased by approximately 3.0%. Effective June 28, 2020, all salary ranges for employees holding positions in classifications assigned to OE#3 will receive a pensionable base pay increase of approximately 3.0%. This will result in both the top and bottom step of the pay range being increased by approximately 3.0%.
Classification Salary Adjustment	Effective the first full pay period after approval by the Civil Service Commission, a classification salary adjustment will be made to the Mechanic series to equal the salary ranges of the Wastewater Mechanic series. The classifications receiving the adjustment are as follows:

CLASSIFICATION TO RECEIVE SALARY ADJUSTMENT	TO EQUAL THE CORRESPONDING WASTEWATER MECHANIC CLASSIFICATION
Apprentice Mechanic (3321)	Apprentice Wastewater Mechanic (3627)
Mechanic I (3323)	Wastewater Mechanic I (3622)
Mechanic II (new)	Wastewater Mechanic II (3672)
Senior Mechanic (3322)	Wastewater Senior Mechanic I (3623)
Senior Mechanic II (new)	Wastewater Senior Mechanic II (3673)

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Premium Pay Employees assigned to the Sewer Program in the Department of Transportation shall be eligible to receive a premium pay of \$40.00 per pay period in addition to their base salary if the employee holds a Collection System Maintenance Certification. The following classifications in the Sewer Program are eligible for this premium pay:

- Maintenance Assistant (3108)
- Maintenance Worker I (3113)
- Maintenance Worker II (3114)
- Senior Maintenance Worker (3115)
- Heavy Equipment Operator (3343)
- Senior Heavy Equipment Operator (3345)

The premium pay becomes effective the first full pay period after the date an approved application is received by the Payroll Department.

Holidays Employees who work on a holiday may request to be paid for hours worked in lieu of receiving compensatory time.

Bilingual Pay Requests for bilingual compensation and testing that are not reviewed within ninety days may be appealed to the Director of Human Resources.

Protective Clothing The voucher for the purchase of protective footwear will include the ability to purchase sole inserts.

Retirement Administrative Costs Costs to the fund for staff salaries and indirect labor costs shall not exceed 0.17% of assets in the fund per year, increased from 0.07%.

In the event the administrative costs of the Federated Retirement System exceed the administrative cost limit as listed above, representatives from the Office of Employee Relations, OE#3, and the Office of Retirement Services will meet to discuss the increase in administrative costs.

Opportunity to Work Before hiring additional part-time employees, the City will offer additional hours of work to existing part-time employees who have the skills and experience to perform the work. The City is developing a process to distribute the hours of work among those existing part-time employees.

This shall not be construed to limit the right of the Department Director, or designee, to determine the days of the week and hours of each day when such part-time employee shall be required to work. Further, nothing shall limit the right of the Department Director, or designee, to determine the days of the week

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and hours of each day when any such part-time non-benefited employee shall be required to work, or whether such part-time non-benefited employee shall work at all.

This shall not be construed to require the City to offer a part-time employee any additional hours of work if it would result in the part-time employee being eligible for overtime compensation at 1.5 times their regular rate of pay or any other additional benefits that said employee is not otherwise eligible.

**Union Release
Time**

The designated bargaining unit representative(s) shall use the City Paid Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. Upon request by the City, the bargaining unit representative(s) shall provide the City with a general explanation of the business conducted when the URT code is used.

**Annual
Performance
Appraisals**

Employees shall not receive an automatic salary step increase if they have an Annual Performance Appraisal with an overall rating below that of "Meets Standard" dated within twelve (12) months prior to the salary step increase.

Reopeners

During the term of the contract, the City and OE#3 agree to that to the extent they arise during the term of the contract, the parties agree to meet and confer over potential changes to the City's healthcare program.

EVALUATION AND FOLLOW-UP

No additional follow up action with the City Council is expected at this time.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the September 25, 2018, City Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This agreement was not coordinated with any board or commission.

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COST SUMMARY/IMPLICATIONS

The ongoing non-pensionable compensation increase equivalent to approximately 5% of an employee's base pay as of September 23, 2018, will be approximately \$2,294,000 in FY 2018-2019. This increase was assumed in the development of the 2018-2019 Adopted Budget. The budget actions for 2018-2019 will be brought forward for City Council approval in a future budget process in 2018-2019. The increases in the General Fund will be offset by a corresponding decrease to the Salaries and Benefits Reserve, and the increases to the special funds will generally be offset by corresponding decreases to the unrestricted ending fund balance in those funds or an alternative funding source. The ongoing increased cost of the 3% general wage increase effective June 30, 2019, is approximately \$2,239,000. The ongoing increased cost of the 3% general wage increase effective June 28, 2020, is approximately \$2,306,000.

The ongoing increased cost of the classification salary adjustments for the Apprentice Mechanic (3321), Mechanic (3323) and Senior Mechanic (3322) positions, as well as the addition of two additional classifications (Mechanic II and Senior Mechanic) is approximately \$615,000. Budget adjustments will be brought forward in a future budget process in 2018-2019, if necessary.

The ongoing maximum increased cost of the premium pay for OE#3 employees in the Sewer Program of the Department of Transportation is estimated to be approximately \$100,000, if all employees in the Sewer Program were eligible for the Collection System Maintenance Certification premium pay. Budget adjustments will be brought forward in a future budget process in 2018-2019, if necessary.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.



JENNIFER SCHEMBRI
Director of Employee Relations



MARGARET MCCAHAN
Budget Director

For questions, please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachment A – OE#3 Tentative Agreement

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

Attachment A

TERM

October 1, 2018 – September 30, 2021

WAGES

Fiscal Year 2018-2019

- 5% ongoing non-pensionable compensation increase effective September 23, 2018. Effective September 23, 2018, all employees holding positions in classifications assigned to OE#3 shall receive an approximate 5% ongoing non-pensionable compensation increase.
- Effective the first full pay period after this matter is approved by the Civil Service Commission, a classification salary adjustment will be made to the Mechanics Series to equal the salary ranges of the Wastewater Mechanic series as follows:

CLASSIFICATION TO RECEIVE SALARY ADJUSTMENT	TO EQUAL THE CORRESPONDING WASTEWATER MECHANIC CLASSIFICATION
Apprentice Mechanic (3321)	Apprentice Wastewater Mechanic (3627)
Mechanic I (3323)	Wastewater Mechanic I (3622)
Mechanic II (new)	Wastewater Mechanic II (3672)
Senior Mechanic (3322)	Wastewater Senior Mechanic I (3623)
Senior Mechanic II (new)	Wastewater Senior Mechanic II (3673)

The parties understand that job specifications, including minimum qualifications and job duties will be revised.

Fiscal Year 2019-2020

- 3% general wage increase effective Fiscal Year 2019-2020. Effective June 30, 2019, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 3%.

Fiscal Year 2020-2021

- 3% general wage increase effective Fiscal Year 2020-2021. Effective June 28, 2020, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 3%.

HOLIDAY

- Holiday (See Attached)

ANNUAL PERFORMANCE APPRAISALS

- Annual Performance Appraisal (See Attached)

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

RETIREMENT

- Retirement (See Attached)

HOUSEKEEPING

- Alternative Work Schedule (See Attached)
- Non-Generic Prescriptions (See Attached)

HOURS OF WORK AND OVERTIME

- Overtime – Volunteers (See Attached)

PREMIUM PAY

- Collection System Maintenance Certification (See Attached)
- Call Back/Standby (See Attached)
- Protective Clothing (See Attached)
- Bilingual Pay (See Attached)
- Class A/B License (See Attached)

BEREAVEMENT LEAVE

- Bereavement Leave (See Attached)

TENTATIVE AGREEMENTS

- Housekeeping – Employee Commute Benefit Program (See Attached)
- Union Release Time (See Attached)
- Opportunity to Work (See Attached)

REOPENERS

- Healthcare Program (See Attached)

** This agreement is considered tentative and shall not be considered final or binding until ratified by union members and approved by the City Council. This document sets forth the full agreements of the parties reached during these negotiations. Anything not included in this document is not part of the Tentative Agreement.*

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT

FOR THE CITY:

Jennifer Schembri 8/30/18
Jennifer Schembri Date
Director of Employee Relations

Marco Mercado 8/29/18
Marco Mercado Date
Assistant to the City Manager, OER

Carolyn Gibson 8-29-18
Carolyn Gibson Date
Executive Analyst, OER

Kristen Hilton 8/29/18
Kristen Hilton Date
Executive Analyst, OER

Avi Yotam 8/30/18
Avi Yotam Date
City Negotiation Team Member

FOR THE UNION:

Mary Blanco 8/29/18
Mary Blanco, Business Representative Date
Operating Engineers, Local 3 (OE#3)

Robert Maes 8-30-18
Robert Maes, Team Member Date
Operating Engineers, Local 3 (OE#3)

Brett Benitez 8-30-18
Brett Benitez, Team Member Date
Operating Engineers, Local 3 (OE#3)

Paul Prange 8/29/18
Paul Prange, Team Member Date
Operating Engineers, Local 3 (OE#3)

Larry Brown 8-29-18
Larry Brown, Team Member Date
Operating Engineers, Local 3 (OE#3)

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY COUNTER PROPOSAL TO OE#3 – HOLIDAYS

City Proposed Language:

ARTICLE 16 HOLIDAYS

- 16.1 Except as otherwise provided, each full-time employee who is on paid status before and after the holidays specified below shall be entitled to paid holiday leave on each of the following specified days, and on no other day, during the term of this Agreement:

New Year's Day	Columbus Day
Martin Luther King Day	Veterans Day
President's Day	Thanksgiving Day
Cesar Chavez Day	Day After Thanksgiving
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
Labor Day	New Years Eve Day

- 16.2 Holiday Closure. The City Manager or designee may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off; however, it shall not be a requirement. Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees taking lost time during the closure shall continue to receive vacation, sick leave, city-wide and department seniority accruals. Eligible employees who have been employed with the City for less than 13 biweekly pay periods may use available vacation leave during the holiday closure.
- 16.3 Except as otherwise designated, any holiday specified herein, including any other day proclaimed or designated by the City Council as a holiday for which full-time employees are entitled to holiday leave, which falls on a Sunday shall be observed for purposes of this Article on the following Monday. Such holidays which fall on a Saturday shall be so observed on the preceding Friday.
- 16.4 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the Department Director or designee, may specify the days of the week and the hours of such days when any such employee in their department or under their jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Each full-time employee who is required to work on any or all of said holidays shall receive the salary they would be entitled to for that day at their regular rate of pay, and in addition, shall receive compensatory time off duty equal to 1.5 the number of hours which the employee works on said holiday.
- 16.5 ~~For employees who were placed on an alternate work schedule prior to March 31, 1993, if any of said holidays falls on a full-time employee's regular day off, during which he is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned workday. The union office and the Office of Employee Relations have a complete list of said employees. Said compensatory time off duty shall be credited to~~

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS TENTATIVE AGREEMENT

~~such employee in accordance with Article 6, Subsection 6.6 of this Agreement; provided, however, that upon written request by the employee to the Department Head, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him multiplied by the employee's equivalent hourly rate.~~

~~16.5.1 Any employee who initiates or is placed on an alternate work schedule after March 31, 1993 will be compensated for holidays based upon an eight hour standard per holiday. Such employee shall be entitled to eight (8) hours of compensatory time off duty. The terms of this holiday compensation can be found in Article 32 of this agreement.~~

16.6 ~~For employees on an alternate work schedule if~~ If any of said holidays falls on a full-time employee's regular day off, during which the employee is not required to work, such employee shall be entitled to eight (8) hours of compensatory time off duty for full day holidays. Said compensatory time off duty shall be credited to such employees in accordance with Article 6, Subsections 6.6, 6.7, 6.8, and 6.9 of this Agreement; provided, however, that upon written request by the employee to the Department Director or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time off, additional compensation equal to the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

16.7 Said compensatory time off duty shall be credited to such employee in accordance with Section 6, Subsections 6.6, 6.7, 6.8, and 6.9 of this Agreement; provided, however, that upon written request by the employee to the Department Director, or designee, within not more than 30 calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to their regular pay for such holiday and in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

16.87 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition.

16.9 An employee who is scheduled to work on a holiday, and who does not work due to illness or injury for which they would otherwise be eligible for sick leave, shall receive sick leave pay if available and shall not be eligible for holiday leave.

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL – ANNUAL PERFORMANCE APPRAISALS

City Proposed Language:

5.21 Annual Performance Appraisals: Employees shall not receive an automatic salary step increase if they have an Annual Performance Appraisal with an overall rating below that of "Meets Standard" dated within twelve (12) months prior to the salary step increase.

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY COUNTER PROPOSAL – RETIREMENT

City Proposed Language:

ARTICLE 26 RETIREMENT

26.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

26.1.1 If an employee receives a service-connected disability retirement, pursuant to an application for such retirement made on or after July 13, 1986, the retirement benefit will be offset by subsequent workers' compensation payments except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.

26.1.2 Administrative costs of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. Costs to the fund for staff salaries and indirect labor costs shall not exceed ~~0.07%~~ 0.17% of assets in the fund per year.

In the event the administrative costs of the Federated Retirement System exceed the administrative cost limit as listed above, representatives from the Office of Employee Relations, OE#3, and the Office of Retirement Services will meet to discuss the increase in administrative costs.

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL – ALTERNATIVE WORK SCHEDULE

City Proposed Language:

ARTICLE 32 ALTERNATE WORK SCHEDULE

32.1 ~~The City and the Union agree that the availability of Alternate Work Schedules is a valuable benefit to employees in that it promotes job satisfaction, and is of benefit to the City in that it reduces traffic congestion and demands on limited parking facilities. The use of alternate schedules is encouraged, where it can be accommodated without impairing departmental operations or public service. Employees may be eligible for an Alternative Work Schedule, subject to the provisions and conditions in the City of San Jose Alternative Work Schedules Policy. Neither the failure of the Department to enter in an alternative schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12.~~

32.2 ~~As an alternative to the normal work schedule assigned by the Department in accordance with Article 6.3, and subject to the concurrence and approval of the respective Department Director or designee, a regular full-time employee may work an alternate work schedule. The following conditions and restrictions apply to all employees working an alternate schedule.~~

32.2.1 ~~An employee may work a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed 80 hours in any biweekly pay period. Unless otherwise specified in this Memorandum of Agreement, alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly period. Examples of schedules which may be elected include:~~

- ~~• Four 10-hour days each week.~~
- ~~• Four 9-hour days and one 4-hour day each week.~~
- ~~• Eight 9-hour days, one 8-hour day, and one day off each biweekly pay period.~~

32.2.2 ~~No alternate work schedule may be established in which overtime is incurred as a part of the established work schedule either under this agreement or under Federal or State law.~~

32.2.3 ~~The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the~~

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

~~employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.~~

~~32.2.4 It is further understood that any alternate schedule agreement entered into pursuant to the provisions herein, shall terminate immediately upon the date of the transfer, promotion or demotion of the employee.~~

~~32.2.5 Neither the failure of the Department to enter into an alternate schedule agreement, nor the termination by the Department of any such agreement, shall be subject to the Grievance Procedure provided in Article 12.~~

~~32.2.6 For a schedule of 4-10 hour days, the three (3) consecutive days off may be waived by mutual agreement.~~

~~32.3 Holiday Compensation for Employees on Alternate Work Schedules:~~

~~32.3.1 If a holiday is observed on an employee's regularly scheduled workday, the employee shall be entitled to pay for the number of hours the employee was scheduled to work that day, up to ten (10) hours.~~

~~32.3.2 If a holiday is observed on an employee's regularly scheduled day off, the employee shall be credited with eight (8) hours compensatory time off at the 1.0 rate for a full day holiday.~~

~~32.3.3 If an employee on an alternate schedule works on a holiday, the employee shall receive eight (8) hours of compensatory time at the 1.0 rate for a full day holiday, and in addition shall receive pay or compensatory time off at the 1.5 rate for the number of hours actually worked.~~

~~32.3.4 Holiday Compensation for Employees in the Regional Wastewater Facility Division of the Environmental Services Dept. on Alternate Work Schedules~~

~~1. If an employee on an 8 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.~~

~~2. If an employee on a 9 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.~~

~~3. If an employee on a 10 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.~~

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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- ~~4. If an employee on a 12 hour schedule is scheduled to work a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.~~
- ~~5. If an employee is scheduled off on a holiday, regardless of the schedule selected, the employee will receive eight (8) hours holiday pay.~~
- ~~6. If an employee is called in to work on a scheduled day off that falls on a holiday, the employee will receive eight (8) hours holiday pay and will be given either overtime pay for all hours actually worked or compensatory time at the overtime rate for all hours actually worked.~~

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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**CITY COUNTER PROPOSAL – HOUSEKEEPING – NON-GENERIC
PERSSCRIPTIONS**

City Proposed Language:

ARTICLE 5 WAGES AND SPECIAL PAY

5.5 Health Insurance.

- 5.5.1 All available plans have a 4-tier rate structure (Employee, Employee plus spouse/domestic partner, Employee plus Child(ren) and Family).
- 5.5.2 The City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan.

The Kaiser Permanente Deductible 1500 HMO Benefit Plan will be available to employees represented by OE#3 in addition to the existing plan options.

- 5.5.3 A \$25 Co-pay plan shall be implemented for all HMO plans, including the following:
 - a. Office Visit Co-pay shall be \$25
 - b. Prescription Co-pay shall be \$10 for generic and \$25 - \$30 for brand name
 - c. Emergency Room Co-pay shall be \$100
 - d. Inpatient/Outpatient procedure Co-pay shall be \$100
- 5.5.4 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to approval by the City and ratification by the Union.
- 5.5.5 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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CITY COUNTER PROPOSAL – OVERTIME VOLUNTEERS

City Proposed Language:

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off, with the exception of holiday leave, shall not be considered time worked for the purpose of calculating eligibility for overtime.

6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.

6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Regional Wastewater Facility will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Regional Wastewater Facility and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.

6.6.3 For overtime work, volunteers will be asked for first, whenever possible. The assignment of overtime work among those that volunteer will be made subject to the necessary skills and experience needed for the overtime assignment as determined by the Department.

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT**

CITY PROPOSAL - PREMIUM PAY

City Proposed Language:

ARTICLE 5 Wages and Special Pay

5.21 Collection System Maintenance Certification. Employees assigned to the Sewer Program in the Department of Transportation in the classifications of Maintenance Assistant (3108), Maintenance Worker I (3113), Maintenance Worker II (3114), Senior Maintenance Worker (3115), Heavy Equipment Operator (3343), and Senior Heavy Equipment Operator (3345) shall be eligible for a \$40.00 per pay period premium pay for holding the Collection System Maintenance Certification. The premium pay becomes effective the first full pay period after the date of an approved application is received by the Payroll Department. Payment of such incentive is not intended to impair or alter the City's ability to transfer or reassign an employee.

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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CITY COUNTER PROPOSAL – CALL BACK/STANDY BY

City Proposed Language:

- 5.8 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited for the time worked, or for three (3) hours at the appropriate rate (1.5), whichever is greater. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three hours, after which time the employee would be eligible for additional pay, but only for actual hours worked.
- 5.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one (1) hour compensation at the appropriate rate (1.5) for each eight (8) hour shift the employee performs standby duty. In the event that the employee is called back to work, they shall be entitled to the compensation provided by Section 5.8 above, in addition to the one-hour of standby compensation for that eight (8) hour shift.
- 5.9.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime
- 5.9.2. Employees who do not return to work but who are contacted by telephone, pager, or computer shall be paid for actual time worked at the appropriate rate of pay.

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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CITY COUNTER PROPOSAL – PROTECTIVE CLOTHING

City Proposed Language:

ARTICLE 5 WAGES AND SPECIAL PAY

5.14 Protective Clothing.

5.14.1 The City agrees to provide a voucher for the purchase of protective footwear, which may include sole inserts, for up to \$200 for employees when it is determined by the Director of Human Resources or designee that protective footwear is required for the employee. Protective footwear shall meet established Occupational Safety and Health Administration's (OSHA) standards, current American National Standard for Personal Protection- Protective Footwear standards and requirements as determined by the City Safety Officer or designee. The City will replace protective footwear as needed, but no more than once per fiscal calendar year. If necessary, the City may replace the employee's safety shoes if they are damaged beyond use due to work related usage as determined by the Department's Safety Officer, or designee, or the City's Safety Officer. An individual may select an approved style that is more expensive than the City maximum by paying the difference. Employees in classifications who are entitled to receive a uniform allowance as provided in Article 5.2 above are not eligible to receive reimbursement for protective footwear under this provision.

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CITY COUNTER PROPOSAL – BILINGUAL PAY

City Proposed Language:

5.15 Bilingual Pay. Eligible full time employees shall be compensated at the rate of \$29.00 per biweekly pay period for each pay period.

5.15.1 In the event an eligible employee is on a paid or unpaid leave of absence for a period of one full pay period or more, the appropriate reduction in the above-mentioned compensation shall be made. The employee is or was selectively certified for a position which has been approved by the Director of Human Resources, or designee, for selective certification based on bilingual ability and is currently assigned to such position, or

5.15.2 The duties currently assigned to an employee and/or currently being performed by an employee requires utilization of a non-English language on a regular basis.

5.15.23 Such employee must be certified as bilingual according to the current established procedure. Before changing the current procedure, the City agrees to provide advanced notice to the Union, pursuant to Article 2.

5.15.4 In the event an eligible employee is on a paid or unpaid leave of absence, for a period of one full pay period or more, the appropriate reduction in the above-mentioned compensation shall be made.

5.15.3 The employee is or was selectively certified for a position which has been approved by the Director of Human Resources, or designee, for selective certification based on bilingual ability and is currently assigned to such position, or the duties currently assigned to an employee and/or currently being performed by an employee requires utilization of a non-English language on a regular basis.

5.15.3.1 Employees utilizing a non-English language on a regular basis may submit a request for compensation and testing to their supervisor and/or Department Director. Requests for compensation and testing that are not reviewed within ninety (90) days may be appealed to the Director of Human Resources pursuant to the provisions set forth in Article 5.15.4, below.

5.15.45 If an employee is denied bilingual pay under the requirements set forth in this article, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee

**2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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may apply in writing for reconsideration with the Director of Human Resources. The written decision of the Director of Human Resources shall be final, with no process for further appeal.

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CITY COUNTER PROPOSAL – CLASS A/B LICENSE PAY

City Proposed Language:

ARTICLE 5 WAGES AND SPECIAL PAY

5.14 Class A/B License Pay. Employees who are in positions within classifications in which only certain positions are designated as requiring Class A or B license as a condition of employment shall be eligible for a \$40 per pay period premium pay. Specific positions within a classification that require a Class A or B license will be determined by the Department Director or designee, and this information will be provided to the union upon request. Employees that are not in positions that require a Class A or B license will not be required to maintain the license. Those employees within classifications where a Class A or B license is required of every position in the class are not eligible for the premium pay.

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CITY COUNTER PROPOSAL – BEREAVEMENT LEAVE

City Proposed Language:

Article 21 BEREAVEMENT LEAVE

21.1 Each full time or benefited part-time employee shall be granted bereavement leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee, employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an applicable relative. Under extreme circumstances, the fourteen (14)-day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal.

- a) Parent/Step-Parent
- b) Child/Step-Child
- c) Spouse
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparent/ Step-Grandparent
- f) Great Grandparent/Step-Great Grandparent
- g) Grandchild
- h) Brother/sister/son/daughter-in-law
- i) Domestic Partner

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CITY PROPOSAL TO OE#3 – HOUSEKEEPING

City Proposed Language:

ARTICLE 37 EMPLOYEE COMMUTE BENEFIT PROGRAM

The Employee Commute Benefit Program shall be as follows:

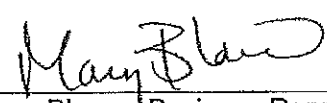
- 37.1** Full-time, and part-time employees who worked an average of twenty (20) or more hours per week within the previous calendar month, shall be eligible to participate in the Employee Commute Benefit Program. Seasonal workers and Airport employees are not eligible to participate in the Employee Commute Benefit Program; the Airport provides its own separate employee commute program.
- 37.2** Participation in an Employee Commute Benefit Program through the Santa Clara Valley Transit Authority ("VTA") Eco-Pass Program will be available to eligible employees, subject to the terms of the Employee Commute Benefit Program, as defined in Article 37.1.
- 37.3** Pursuant to the Employee Commute Benefit Program, eligible employees shall be allowed to use pre-tax dollars ("Pre-Tax Payroll Deduction Program") to pay for transit service beyond those provided by VTA. The administrative fees of the Pre-Tax Payroll Deduction Program will be paid for by the City. The Pre-Tax Payroll Deduction Program shall enable employees to use pre-tax dollars to pay for non-VTA transit services, which may include, but are not limited to, Caltrain, the Hwy 17 Express Bus, and BART.

** This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY:

 5/17/18
Marco Mercado Date
Assistant to the City Manager, OER

FOR THE UNION:

 5/17/18
Mary Blanco, Business Representative Date
Operating Engineers, Local 3 (OE#3)

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
TENTATIVE AGREEMENT

CITY PROPOSAL TO OE#3 – UNION RELEASE TIME

City Proposed Language:

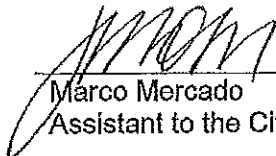
ARTICLE 12 GRIEVANCE

12.8 Designated Job Representative

12.8.8 City Paid Union Release Time (URT). The designated bargaining unit representative(s) shall use the City Paid Union Release Time (URT) payroll code for any paid time off eligible for release time from regular City duties to attend authorized meetings. Upon request by the City, the bargaining unit representative(s) shall provide the City with a general explanation of the business conducted when the URT code is used.

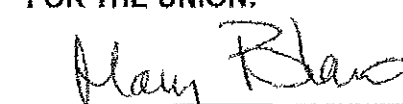
** This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY:

 5/23/18

Marco Mercado Date
Assistant to the City Manager, OER

FOR THE UNION:

 5/23/18

Mary Blanco, Business Representative Date
Operating Engineers, Local 3 (OE#3)

2018 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
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CITY PROPOSAL TO OE#3 – OPPORTUNITY TO WORK

City Proposed Language:

ARTICLE 6 HOURS OF WORK AND OVERTIME

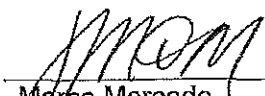
6.5.3 Before hiring additional part-time employees, the City will offer additional hours of work to existing part-time employees who have the skills and experience to perform the work. The City will develop a process to distribute the hours of work among those existing part-time employees.

Nothing herein contained, however, shall be construed to limit the right of the Department Director or designee, to determine the days of the week and hours of each day when such part-time employee shall be required to work. Further, nothing herein contained, shall limit the right of the Department Director or designee to determine the days of the week and hours of each day when any such part-time non-benefited employee shall be required to work, or whether such part-time non-benefited employee shall work at all.

This section shall not be construed to require the City to offer a part-time employee any additional hours of work if it would result in the part-time employee being eligible for overtime compensation at 1.5 times their regular rate of pay or any other additional benefits that said employee is not otherwise eligible.

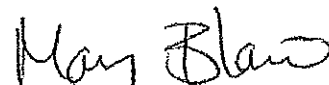
** This agreement is considered tentative and shall not be considered final or binding until a final agreement on all terms has been reached and both ratified by union members and approved by the City Council.*

FOR THE CITY:

 7/24/18

Marco Mercado Date
Assistant to the City Manager, OER

FOR THE UNION:

 7/24/18

Mary Blanco, Business Representative Date
Operating Engineers, Local 3 (OE#3)

SIDE LETTER AGREEMENT

BETWEEN
THE CITY OF SAN JOSE
AND
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

City Healthcare Program Reopener

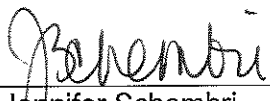
To the extent that they are a mandatory subject of bargaining and arise during the term of the successor Memorandum of Agreement (MOA) between the City of San Jose (City) and the International Union of Operating Engineers, Local No. 3 (OE#3), the parties agree to meet and confer over potential changes to the City's healthcare program.

Either the City or OE#3 may provide notice to the other of its request to discuss potential changes to the City's healthcare program. The parties shall commence the discussions within ten (10) calendar days after the City or OE#3 receive notice from the other.

To the extent that any change to the City's healthcare program is a mandatory subject of bargaining, the parties shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties reach impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or the Meyers Milias Brown Act. All mandatory impasse procedures (mediation and factfinding (if requested by OE#3)) shall be exhausted. The parties understand that this means that, notwithstanding any other provision in the successor MOA, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

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

FOR THE CITY:

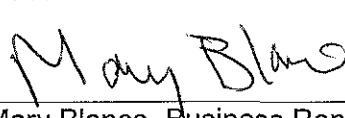
 8/29/18

Jennifer Schembri Date
Director of Employee Relations

 8/29/18

Marco Mercado Date
Assistant to the City Manager, OER

FOR THE UNION:

 8/29/18

Mary Blanco, Business Representative Date
Operating Engineers, Local 3 (OE#3)