CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jennifer Schembri
Margaret McCahan

SUBJECT: SEE BELOW

DATE: October 9, 2018

Approved D.DSL

Date 10/12/18

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, 2019

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, 2019, and authorizing the City Manager to execute the agreement with those terms.

OUTCOME

Adoption of the resolution 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, 2019 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) expired 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, Groundsworker, 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 with a three (3) year term; however, on or about September 21, 2018, the City was notified that the OE#3 membership did not ratify the Tentative Agreement reached on August 30, 2018.

In October 2018, the City and OE#3 resumed negotiations on a successor agreement and, on or about October 5, 2018, the City and OE#3 reached a Tentative Agreement on the terms to be contained in the successor Memorandum of Agreement (MOA) between the City and OE#3 with a one (1) year term.

The Tentative Agreement reached on October 5, 2018, is pending ratification by the OE#3 membership. OE#3 will notify the City of the ratification results prior to the October 23, 2018, City Council meeting.

ANALYSIS

A complete copy of the Tentative Agreement reached on October 5, 2018, is attached (Attachment A). The following is a summary of the key provisions of the Tentative Agreement.

Term — October 1, 2018 through September 30, 2019

General Wage Increase — Effective October 21, 2018, 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)

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 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 October 23, 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.

COST SUMMARY/IMPLICATIONS

The ongoing increased annual direct cost of the 3% pensionable wage increase effective October 21, 2018, will be approximately $2.17 million in 2018-2019. This increase was assumed in the development of the 2018-2019 Adopted Budget. Related 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 of approximately $735,000 will be offset by a corresponding decrease to the Salaries and Benefits Reserve; increases within 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 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. These positions are primarily funded by special funds. The Administration will continue to monitor personal services expenditures of the impacted departments within the various special funds and will bring forward adjustments as necessary in a future 2018-2019 budget process.

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

TERM

October 1, 2018 – September 30, 2019

WAGES

Fiscal Year 2018-2019

- 3% general wage increase. Effective the first full pay period after this agreement is ratified by union members and approved by the City Council, all salary ranges for employees holding positions in classifications assigned to OE#3 shall be increased by approximately 3%.

- 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.

ANNUAL PERFORMANCE APPRAISALS

- Annual Performance Appraisal (As Proposed August 29, 2018)

RETIREMENT

- Retirement (As Proposed August 29, 2018)

HOUSEKEEPING

- Alternative Work Schedule (As Proposed August 29, 2018)
- Non-Generic Prescriptions (As Proposed August 29, 2018)

PREMIUM PAY

- Call Back/Standby (As Proposed August 29, 2018)
- Protective Clothing (As Prosed August 29, 2018)

BEREAVEMENT LEAVE

- Bereavement Leave (As Proposed August 29, 2018)

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

TENTATIVE AGREEMENTS

- Housekeeping – Employee Commute Benefit Program – Tentative Agreement Reached May 17, 2018)
- Union Release Time – Tentative Agreement Reached May 23, 2018
- Opportunity to Work – Tentative Agreement Reached June 24, 2018

REOPENERS

- *Healthcare Program – Side Letter Dated August 29, 2018*

* *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.*

FOR THE CITY:

10/9/18
Jennifer Schembri — Date
Director of Employee Relations

10/5/18
Marco Mercado — Date
Assistant to the City Manager, OER

10-5-18
Carolyn Gibson — Date
Executive Analyst, OER

10/5/18
Kristen Hilton — Date
Executive Analyst, OER

10/5/18
Avi Yotam — Date
City Negotiation Team Member

FOR THE UNION:

10/5/18
Mary Blanco, Business Representative — Date
Operating Engineers, Local 3 (OE#3)

10/5/18
Robert Maes, Team Member — Date
Operating Engineers, Local 3 (OE#3)

10-5-18
Brett Benitez, Team Member — Date
Operating Engineers, Local 3 (OE#3)

10/5/18
Paul Prange, Team Member — Date
Operating Engineers, Local 3 (OE#3)

10-5-18
Larry Brown, Team Member — Date
Operating Engineers, Local 3 (OE#3)

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.

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.

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~~

~~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.~~

~~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.~~

CITY COUNTER PROPOSAL – HOUSEKEEPING – NON-GENERIC PERSCRIPTIONS

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
TENTATIVE AGREEMENT

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.

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.

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

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

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:

Mary Blanco 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:

Mary Blanco 5/23/18

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

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:

Mary Blanco 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)