CITY COUNCIL OF THE CITY OF SAN DIEGO
THE CLOSED SESSION MEETING REPORT
FOR MONDAY AND TUESDAY, OCTOBER 20 AND 21, 2008
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101

REPORTING THE RESULT OF THE CLOSED SESSION MEETING

Only items that can be disclosed are reported out in the Open Session of the regular City Council Meeting. Public comment on Closed Session items are taken in Open Session. Please refer to the City Clerk's minutes for Open Session for more information. Assistant City Attorney Karen Heumann reports the results of the Closed Session Meeting of October 20 and 21, 2008, as follows:

CLOSED SESSION MEETING FOR MONDAY, OCTOBER 20, 2008

Closed Session Items were heard on Tuesday, October 21, 2008.

CLOSED SESSION MEETING FOR TUESDAY, OCTOBER 21, 2008

ROLL CALL:

Present: Mayor Sanders, Council President Peters, Council President Pro Tem Madaffer, and Councilmembers Faulconer, Atkins, Maienschein, Frye, and Hueso

Absent: Councilmember Young - Dist. 4 (Absent for Item CS-4.)

CLOSED SESSION ITEMS:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code Section 54956.9(a):

CS-1 *Deputy City Attorney Association v. City of San Diego*
LA-CE-359

CDCA Assigned: A. Hersh

Report: Nothing to report

CS-2 ***Valerie O'Sullivan v. City of San Diego***
San Diego Superior Court Case No. GIC 826918; Court of Appeal Case No. 826918

DCA Assigned: G. Schaefer

Report: Nothing to report

CS-3 ***Todd Sabin, Stacy Sabin, Stephen Games, Sandra Games v. City of San Diego***
(San Diego Superior Court Case No. 37-2008-00090721-CU-PA-CTL;
City of San Diego v. Todd Sabin, et al.
San Diego Superior Case No. 37-2008-00081284-CU-OR-CTL)

DCA Assigned: M. Dickenson

Report: Nothing to report

CS-4 ***Christopher Stavros v. City of San Diego***
Claim No. LP05-0534-2204

DCA Assigned: D. Shanahan

Report: Nothing to report

Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:

CS-5 **Agency Negotiator:** Scott Chadwick, Jay Goldstone

Employee Organizations: Municipal Employees Association

CDCA Assigned: A. Hersh
DCA Assigned: B. Gersten

Motion: To authorize settlement as contained in the negotiated settlement agreement between the City and MEA in the document entitled "Grievance Settlement Agreement". (See attachment.)
Moved: Council President Peters - Dist. 1
Seconded: Councilmember Atkins - Dist. 8
Vote: 6/0 [Passed with Councilmembers Faulconer and Frye voting "No"]
Absent: All Present
Report: Below is the report out from Closed Session made by Assistant City Attorney Karen Heumann in Open Session at 6:45 p.m.

Today, the City Council voted in Closed Session on Item **CS-5, Conference with Labor Negotiators regarding negotiated settlement of language and remedy contained in City-MEA Memorandum of Understanding, Article 22, Section 2.B.,**

to authorize settlement as contained in the negotiated settlement agreement between the City and MEA in the document entitled "Grievance Settlement Agreement". A copy of the negotiated Agreement has been given to the City Clerk and is available for review in her office. This closed session statement and a copy of the negotiated Agreement will also be available for review on the City's website. Finally, this matter will come back next week in open session for the City Council to publicly vote on the negotiated Agreement. The negotiated Agreement resolves disputes regarding retirement pension issues contained in Article 22, Section 2.B. of the City-MEA Memorandum of Understanding.

The motion was made by Council President Peters and seconded by Councilmember Atkins.

The motion passed on a vote of 6 to 2, with Councilmembers Faulconer and Frye voting "No."

Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

CS-6 Property: World Trade Center Building, 1250 6tb Avenue

Agency Negotiator: Jim Barwick, Director, Real Estate Assets Department

Negotiating Party: Chhatrala Group

Under Negotiation: Price and terms of the sale of City property

Report: Nothing to report

REPORTED BY: _____
Karen Heumann
Assistant City Attorney

GRIEVANCE SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the City of San Diego ("City") and the San Diego Municipal Employees Association ("MEA") as a full and final resolution of MEA's grievance related to Article 22, subsection B of the MOU in effect from July 1, 2005, through June 30, 2008. This MOU provision is entitled "Use of Negotiated Employee Pension Contribution Increases."

On or about April 8, 2008, MEA filed a grievance alleging a violation of this MOU provision, followed by an amendment to the grievance filed on or about July 8, 2008.

The parties have met and conferred in a good faith effort to resolve this grievance and to avoid further proceedings or litigation related to the interpretation and enforcement of this contractual provision, and agree to the following terms subject to the approval and ratification contingencies identified below.

1. The 3% increase in each MEA-represented employee's pension contribution which took place during the fiscal year which began on July 1, 2007, and ended on June 30, 2008 (fiscal year 2008) – resulting in a corresponding decrease in the amount of the City's "pick-up" of employee pension contributions – will be refunded to the employee in the exact amount attributed to the employee so long as that employee remains employed by the City in *any* job classification (whether represented by MEA, another Union, or unrepresented), or is otherwise in an approved non-active status. Stated another way, the amount of the refund per employee will be 3% of his or her pensionable salary earned during fiscal year 2008 to the extent that salary was earned while employed in an MEA-represented job classification during all or any portion of that fiscal year, and the refund calculation will be limited to the earnings while in such an MEA-represented job classification and no other.

(A) This refund remedy is in lieu of the MOU provision which would otherwise require these same total fiscal year 2008 monies to be transferred from the encumbered "UAAL account" to an Employee Contribution Rate Reserve within the San Diego City Employees' Retirement system and used to reduce MEA-represented active employees' pension contributions on a going-forward basis until exhausted. Accordingly, the parties agree that this grievance settlement will not involve or require the re-establishment of the former Employee Contribution Rate Reserve initially established in 1998 and exhausted in February 2006.

(B) Employees who were employed in an MEA-represented job classification during all or any part of fiscal year 2008 but who have retired or separated from City employment before the effective date of this Agreement, which is September 20, 2008, are not eligible and will not receive this lump sum disbursement. The monies attributable to these ineligible former employees will remain available to the City subject to the limitations associated with the encumbered "UAAL account."

(C) No interest will be added to the amount of any employee's refund, and the interest earned on these monies while on deposit in the encumbered "UAAL account" will remain available to the City subject to the limitations associated with this encumbered account.

(D) The parties agree that this lump sum refund will be separately delineated on an employee's pay stub as "MEA Grievance Settlement," and that it will constitute supplemental wages for tax purposes with deductions being made in accordance with IRS Publication 15, Circular E, Employer's Tax Guide and the California Employer's Guide (both for use in 2008), whereby the supplemental amount will be added to the regular wages for the payroll period, income tax withholding on the combined amount will be determined using the employee's W-4 allowances and the wage bracket tables, the amount being withheld from the regular wages will be subtracted from the combined withholding amount and the remainder withheld from the supplemental wages. State taxes will be calculated by the same method. For those employees who are mandatory contributors to Medicare, a 1.45% deduction will also be taken for this purpose. As to those eligible employees who are out of the workplace on an approved absence and not receiving a regular paycheck, separate checks for these supplemental wages will be drawn and mailed to the employee's home address, with flat tax deductions being made as follows: 25% for federal taxes, 6% for state taxes, and 1.45% for Medicare.

(E) The amount of the lump sum refund paid to any eligible employee will not constitute pensionable salary for any purpose related to the administration of the SDCERS pension plan, including but not limited to the calculation of an employee's high one year.

(F) The lump sum refund will not be subject to SPSP deductions or employer-paid SPSP contributions.

(G) No other monies will be refunded to any employee covered by this Agreement or transferred to the Employee Contribution Rate Reserve as a result of the "pick-up" concessions which became effective on July 1, 2005, including those monies attributable to MEA-represented employees which accumulated in the UAAL Encumbered Fund during fiscal years 2006 and 2007 and were used to support the Tobacco Securitization Bond sale or were otherwise transferred to SDCERS. The 3% "pick-up" concession monies attributable to MEA-represented employees which have accumulated in the UAAL Encumbered Fund between July 1st and September 19th of the current fiscal year will remain in this Fund for use in accordance with the restrictions of Article 22, subsection B of the parties' 7/1/05 through 6/30/08 MOU, and will not be refunded to any employee covered by this Agreement or transferred to the Employee Contribution Rate Reserve.

2. Effective with the pay period beginning on September 20, 2008, 2% of the 3% "pick-up" concession which became effective on July 1, 2005, shall be reversed such that the City resumes its "pick-up" of this 2% portion of the original concession.

(A) Effective with the pay period beginning on September 20, 2008, the remaining 1% of this 3% initial 7/1/05 concession will no longer be covered by Article 22, subsection B of the parties' 7/1/05 through 6/30/08 MOU, and the City is free to determine how to use the savings generated by this 1% "pick-up" concession in the overall best interest of the City.

3. SAFE HARBOR CLAUSE. Because both the City and MEA have compromised in reaching this Settlement Agreement, neither wishes to face an unreasonable risk that either the

2% "pick-up" reversal or the 1% "pick-up" residual concession covered by section 2 of this Agreement will be changed during the meet and confer process for a new MOU covering fiscal years 2010, 2011, or 2012, in the absence of the mutual agreement of the parties. A "mutual agreement" within the meaning of this section means that both parties agree that another proposed term of a new MOU would provide a sufficient offsetting advantage to justify a change in these "pick-up" terms. On this basis, a change in either the 2% or the 1% "pick-up" terms described above in section 2 would not constitute a diminution in the reasonable value of the settlement on which both parties have relied. However, neither party may include a change to these "pick-up" terms in a "last, best and final offer" for a new MOU during this "safe harbor" period, and the City may not unilaterally impose a change in the 2% "pick-up" during this period.

4. This Agreement does not affect the 1% "pick-up" concession which became effective on July 1, 2007, in exchange for an extra $500 in the Flexible Benefits Plan for MEA-represented employees; nor does this Agreement affect the restrictions on the City's use of these savings as set forth in Article 22, subsection B of the parties' 7/1/05 through 6/30/08 MOU.

5. This Settlement Agreement will be final and binding upon the parties, as well as upon all affected MEA-represented employees, upon its approval by the Mayor and City Council and upon its ratification by MEA. Both parties agree to support its approval by these respective bodies.

DATED: _____

CITY OF SAN DIEGO:

By: _____
Jay M. Goldstone
Chief Operating Officer

By: _____
Scott Chadwick
Labor Relations Manager

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION:

By: _____

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