



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** October 13, 2017

Approved

*D. P. S. Y. L.*

Date

*10/13/17*

**SUBJECT: TERMS OF AN AGREEMENT WITH THE NINE (9) FEDERATED BARGAINING UNITS REGARDING THE ALTERNATIVE PENSION REFORM FRAMEWORK AND MODIFICATIONS FOR EMPLOYEES IN UNITS 99 AND 81/82.**

## RECOMMENDATION

It is recommended that the City Council adopt a resolution to:

- a) Approve the terms of an Agreement between the City and nine (9) Federated bargaining units regarding additional amendments to the Alternative Pension Reform Framework Settlement Agreement, including, but not limited to, pension cost-sharing, the independent medical review panel, the Voluntary Employees' Beneficiary Association (VEBA) and retiree healthcare, and authorize the City Manager to execute an Agreement with those terms.
- b) Approve the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Agreement except for certain provisions specified herein.

## OUTCOME

Adoption of the resolution and authorization to execute the agreement would result in an agreement between the City and the Federated Bargaining Units on amendments to the Alternative Pension Reform Settlement Framework.

## BACKGROUND

On November 2, 2010, the City voters approved an amendment to the City Charter allowing the City Council to adopt new retirement plans for new employees. On June 5, 2012, the City voters approved an amendment to the City Charter that changed the parameters for the City's retirement

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plans, known as "Measure B". A second tier of retirement benefits was implemented for sworn employees in the Police Department on August 4, 2013, and for sworn employees in the Fire Department on January 2, 2015. Measure B has subsequently been the subject of various forms of litigation. The City Council directed City Administration to settle the litigation with the City's eleven (11) bargaining units.

In late November and early December of 2015, the City and AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3 reached agreement on the Federated Alternative Pension Reform Settlement Framework ("Federated Framework"). On December 14, 2015, ABMEI also agreed to the terms of the Federated Framework. Where noted, the terms of the Federated Framework also applied to unrepresented employees, including unrepresented management and executive employees in Unit 99. On December 15, 2015, the City Council approved the terms of the Federated Framework after it was ratified by the memberships of AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3. On January 12, 2016, the City Council approved the terms of the Federated Framework with ABMEI after it was ratified by its membership. Attached is the Federated Framework (Attachment A).

The Federated Framework include, among other things, revised Tier 2 pension benefits that include increased pension benefits for Tier 2 employees while preserving the 50/50 cost sharing between the City and Tier 2 employees; closing the defined benefit retiree healthcare benefit to new employees, as well as agreement on a new lowest cost medical plan associated with retiree healthcare; and continuing the elimination of the Supplemental Retiree Benefit Reserve (SRBR)

On November 8, 2016, the voters approved the Alternative Pension Reform Act known as Measure F in the November 2016 election. Measure F included, among other things, prohibiting any enhancements to defined retirement benefits without voter approval; codifying the Tier 2 pension benefit; closing the defined benefit retiree healthcare plan; and prohibiting retroactive defined retirement benefit enhancements. Measure F is also attached (Attachment B).

The City and the Federated Bargaining Units have been engaged in ongoing discussions as the implementation of the terms of the Framework and Measure F has begun. As a result of these discussions, certain terms of the Framework have had to be amended to reflect the subsequent agreement between the City and the Federated Bargaining Units. Accordingly, the parties reached agreement on a Side Letter Agreement which amends specific terms of the Federated Framework. Unless specified in the Side Letter Agreement as described below, all other terms of the Federated Framework shall remain in effect. In addition, the amended terms of the Federated Framework also apply to unrepresented employees, including unrepresented management and executive employees in Unit 99, where applicable.

The ordinances to amend the City's Municipal Code to reflect the amendments to the Federated Framework will be presented to City Council separately.

In addition, the City Council approved a similar agreement with the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, International Association of Fire Fighters,

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Local 230 (IAFF) on amended terms to the Alternative Pension Reform Settlement Framework, as well as the ordinances to amend the City's Municipal Code, on October 3, 2017.

### ANALYSIS

A complete copy of the Side Letter Agreement is attached (Attachment C). The following is a summary of the key provisions contained in the Side Letter Agreement.

**Tier 2  
Retirement Benefits  
(Transition Costs)**

Pursuant to the Framework, Tier 2 employees at the time of the Framework will be transitioned to the restructured Tier 2. The parties agreed that any costs associated with this transition, including any unfunded liability, would be split evenly between the City and *all current and future* Tier 2 employees.

**Tier 2  
Retirement Benefits  
(Tier 1 Eligibility)**

Pursuant to the Framework, former Tier 1 employees who were subsequently rehired into Tier 2 will be placed in Tier 1 *so long as the former Tier 1 employee did not withdraw funds from the plan via a return of contributions. Former Tier 1 employees who withdrew funds from the plan via a return of contributions shall remain in Tier 2 or be rehired into Tier 2. No redeposit of funds will be allowed for the purpose of being considered Tier 1.*

**Retiree Healthcare  
(Eligibility to Purchase  
Retiree Healthcare with  
VEBA)**

Pursuant to the Framework, a Voluntary Employee Beneficiary Association (VEBA) will be established for Tier 2 employees and those who opt out of the current defined benefit retiree healthcare plan.

*To be eligible to purchase into the City's retiree healthcare (both medical and dental) plans, those in the VEBA will need to have at least five (5) years of service with the City.*

*In addition, those in the VEBA shall be able to purchase into the City's retiree healthcare (medical and dental) plans at a retiree-only rate, and not at a blended rate with active employees.*

**Retiree Healthcare  
(In-Lieu Premium  
Credit)**

Pursuant to the Framework, retired members can select to receive an "in lieu" premium credit option of 25% of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage.

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*Eligible members who receive retiree healthcare coverage as a dependent of another City employee or retiree are not eligible for the family in lieu premium credit, and may only elect the single in lieu premium credit.*

**Retiree Healthcare  
(VEBA Contribution  
Rates)**

Pursuant to the Framework, employees currently in the defined benefit retiree healthcare plan may opt out of the defined benefit retiree healthcare plan and be placed into the VEBA.

*Employees in classifications represented by ABMEI, CEO, IBEW, MEF and OE#3 who opt and are placed into the VEBA shall contribute 3.5% of their base pay into the VEBA.*

*Employees in classifications represented by AEA, ALP, AMSP and CAMP who opt and are placed into the VEBA shall contribute 2.5% of their base pay into the VEBA.*

**Retiree Healthcare  
(Tier 1 Rehires)**

Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension *and for retiree healthcare.*

**Retiree Healthcare  
(Tier 2A Employees)**

All Tier 2A employees (those Tier 2 employees making contributions into the defined benefit retiree healthcare plan) may opt out of the defined benefit retiree healthcare plan and be placed into the VEBA.

*Tier 2A employees in classifications represented by ABMEI, CEO, IBEW, MEF and OE#3 who opt and are placed into the VEBA shall contribute 3.5% of their base pay into the VEBA.*

*Tier 2A employees in classifications represented by AEA, ALP, AMSP and CAMP who opt and are placed into the VEBA shall contribute 2.5% of their base pay into the VEBA.*

**Retiree Healthcare  
(VEBA Advisory  
Committee)**

Regarding the VEBA Advisory Committee, the number of members on the committee, qualifications, selection process and term of office shall be established by a negotiated agreement among between the City and all labor groups participating in the plan, including unrepresented members. *The requirement that an agreement be reached by June 1, 2017, shall be removed.*

**Disability Definition  
And Process  
(Appointment by  
Retirement Board)**

The independent panel of experts will be appointed by *five (5)* of the seven (7) Retirement Board members.

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**Disability Definition  
And Process  
(Minimum Qualifications  
of Independent Medical  
Panel)**

Pursuant to the Framework, an independent medical panel shall be established to grant or deny disability retirement applications. Minimum qualifications were established for members of the panel.

*The minimum qualifications mandating that a member of the panel was not a prior or current City employee, or had no experience as an Agreed Medical Evaluator (AME), are removed.*

**Supplemental Retiree  
Benefit Reserve (SRBR)  
(Timing of Guaranteed  
Purchasing Power  
Payment)**

Pursuant to the Framework, the SRBR shall continue to be eliminated and replaced by Guaranteed Purchasing Power (GPP) provision.

*Retirees' pension benefits shall be calculated beginning in January 2018 to determine if a member qualifies for the GPP.*

*The supplemental GPP payment to qualifying members will be included as a line item on the February pension check beginning in February 2018.*

As noted above, unless otherwise specified in the Side Letter Agreement, all other terms of the Federated Framework remain in effect. In addition, the amended terms of the Federated Framework also apply to unrepresented employees, including unrepresented management and executive employees in Unit 99, where applicable.

**EVALUATION AND FOLLOW-UP**

If the City Council adopts the resolution and authorizes the City Manager to execute the agreement, it would result in a Side Letter Agreement between the City and the Federated Bargaining Units on amendments to the Federated Alternative Pension Reform Settlement Framework, as well as approve the the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Side Letter Agreement except for certain provisions specified herein. Ordinances to amend the City's Municipal Code to reflect the amendments to the Federated Framework will be presented to City Council separately to reflect the terms of the Side Letter Agreement amending the Federated Framework.

**PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's website in advance of the October 24, 2017, City Council Agenda.

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**COORDINATION**

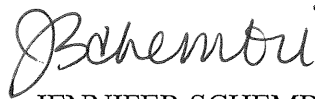
This memorandum was coordinated with the City Attorney's Office.

**COMMISSION RECOMMENDATION/INPUT**

There were no commission recommendations on this item.

**CEQA**

Not a Project; PP10-068(b), Municipal Code or Policy. (City Manager's Office)



JENNIFER SCHEMBRI  
Director of Employee Relations

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

Attachment A – Federated Alternative Pension Reform Settlement Framework Agreement

Attachment B – Measure F

Attachment C – Side Letter Agreement on the Federated Alternative Pension Reform Settlement Framework (Amended Terms)

# ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

## (Evidence Code Section 1152)

### Settlement Discussion Framework Language

*The City of San Jose, AFSCME, Local 101 (on behalf of its chapters, the Municipal Employees' Federation, the Confidential Employees' Organization), the Association of Engineers and Architects, the Association of Maintenance Supervisory Personnel, the City Association of Management Personnel, and the Operating Engineers, Local 3 ("the Litigants") have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The Litigants have reached the below framework for a tentative settlement of American Federation of State, County, and Municipal Employees v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-227864, Harris, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-12-CV-226570, Mukhar, et. Al. v. City of San Jose, Santa Clara County Superior Court, No. 1-12-CV-226574), International Federation of Professional and Technical Engineers vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-996-M, American Federation of State, County and Municipal Employees vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-924-M, Operating Engineers, Local 3 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-900-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.*

*Although the Association of Legal Professionals, the Association of Building, Mechanical, and Electrical Inspectors, and the International Brotherhood of Electrical Workers (“Non-Litigants”) are not plaintiffs in a legal challenge to Measure B, these bargaining units also agree to the settlement framework as listed below and will present this framework to their members for approval. Litigants and Non-Litigants will be referred to collectively as “The Parties”*

*It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all Parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all Parties and other litigants (including the retirees), and ratified by union membership and approved by the City Council.*

## **Retirement Memorandum of Agreement**

1. The Parties (the City of San Jose, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI), the Association of Engineers and Architects (AEA), the Association of Legal Professionals (ALP), the Association of Maintenance Supervisory Personnel (AMSP), the City Association of Management Personnel (CAMP), the Confidential Employees’ Organization (CEO), the International Brotherhood of Electrical Workers (IBEW), the Municipal Employees’ Federation (MEF), and the Operating Engineers, Local 3 (OE#3)) shall enter into a Retirement Memorandum of Agreement to memorialize all agreements related to retirement. The Retirement MOA shall expire June 30, 2025.
2. The Retirement MOA will be a binding agreement describing the terms of the final agreement between the parties (ABMEI, AEA, ALP, AMSP, CAMP,



CEO, IBEW, MEF and OE#3) and will be subject to any agreed-upon reopeners herein.

**The current Tier 2 retirement plans for Federated employees will be modified as follows:**

1. Pension benefit will be 2.0% per year of service
2. One year of service will be 2080 hours. Pensionable pay will be the same as Tier 1 employees.
3. Retirement Age
  - a. The eligible age for an unreduced pension benefit will be age 62
  - b. The eligible age for a reduced pension benefit will be age 55. The reduction for retirement before age 62 will be 5% per year, prorated to the closest month.
4. 70% cap
  - a. The maximum pension benefit will be 70% of an employee's final average salary
5. Three-year final average salary
6. A member is vested after 5 years of service
7. No retroactive defined benefit pension increases or decreases
  - a. Any such changes in retirement benefits will only be applied on a prospective basis.
8. No pension contribution holiday for the City or the employee
9. Final compensation means base pay actually paid to a member and shall not include premium pay or any other forms of additional compensation
10. Current Tier 2 Federated employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 18 (returning Tier 1).

- a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
11. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
  12. Tier 2 cost sharing
    - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
    - b. In the event an unfunded liability is determined to exist for the Federated Tier 2 retirement plan, Tier 2 employees will contribute toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between the employee and the employer.
    - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability.
  13. Cost of Living Adjustment (COLA)
    - a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) (“CPI”) or a back-loaded 2.0% COLA (as described below), whichever is lower. The back-loaded COLA shall be calculated as follows:
      - i. Service at retirement of 1-10 years: 1.25% per year
      - ii. Service at retirement of 11-20 years: 1.5% per year
      - iii. Service at retirement of 21-25 years: 1.75% per year
      - iv. Service at retirement of 26 years and above: 2.0% per year

- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
- c. Current Tier 2 employees as of the date of this agreement will receive an annual cost of living adjustment of the lower of CPI (as defined above) or 1.5% per year for service at retirement of 1-10 years. After 10 years of service, employees will receive an annual cost of living adjustment in retirement pursuant to Section 13(a) above.

14. Disability Benefit (Tier 2)

- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to:
    - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 40% and a maximum of 70% of Final Compensation.
  - b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
    - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 20% and a maximum of 70% of Final Compensation.
15. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.
16. Tier 2 members eligible for retirement will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving spouse or domestic partner in the event of the retiree's death after retirement.
- a. Tier 2 members eligible for retirement will be provided with survivor benefits in the event of death before retirement. These benefits will

be the same as Tier 1 members but reduced to reflect the new 70% pension cap versus the current 75% pension cap.

17. Tier 2 members not eligible for retirement at the time of death will be provided with survivor benefits of a return of employee contributions, plus interest in the event of death before retirement
18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
  - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
  - b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.
  - c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2.
19. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

**Retiree Healthcare - All provisions below are contingent on final costing by the City's Actuary and review for legal and/or tax issues**

1. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
2. New lowest cost medical plan
  - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members
  - b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
  - c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
  - d. Any changes to the "Floor" shall be by mutual agreement only.
3. Potential Tier 1 opt-out
  - a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare

plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.

4. Continue enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers. The enrollment period for Medicare Parts A and B shall begin three months before the retiree's 65th birthday, continue through the month of birth, and conclude three months after the retiree's 65<sup>th</sup> birthday.
5. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or

survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

6. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit unsubsidized coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
7. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.
8. Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare.
9. All Tier 2A employees (except those represented by OE#3) will mandatorily be removed from the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
10. Tier 2A employees represented by OE#3, so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined

benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees represented by OE#3 who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees represented by OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.

11. All Tier 2B employees will be mandated to contribute 2% of base pay to the VEBA.
12. All Tier 2C employees will be automatically removed from the dental benefit plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
13. Members who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 14% of payroll, the City may decide to contribute a maximum of 14%.
14. The parties have been advised that the difference between the defined benefit contribution rate (7.5%) and the VEBA opt-out contribution rate (4.5%) will be taxable income.



15. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
16. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.
17. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member is eligible for Medicare (usually age 65).

- a. Qualifications - The member must not be eligible for an unreduced service retirement.
- b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
- c. Upon reaching Medicare eligibility, the benefit will cease
- d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
- e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

### **Disability Definition and Process**

1. Reinstate the previous City definition for disability for all Federated employees.
2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code §3.28.1240
3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings.
6. Independent panel of experts appointed by 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications
  - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel.
  - b. Each member shall have a four-year term and meet the following minimum qualifications:
    - i. 10 years of practice after completion of residency
    - ii. Practicing or retired Board Certified physician
    - iii. Not a prior or current City employee
    - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
    - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
    - vi. Varying medical experience
  - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
  - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work.

7. Administrative law judge

- a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
- b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
- c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
- d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.

8. Workers' Compensation Offset

- a. The workers' compensation offset currently in place for Federated Plan participants will continue for Tier 1 and Tier 2.

**Supplement Retiree Benefit Reserve (SRBR)**

1. Continue elimination of SRBR

- a. The funds credited to the SRBR will continue to be credited to the Federated City Employees' Retirement System to pay for pension benefits

2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to

maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.
- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 68.
- e. In the event of litigation by a retired member or members of the Federated bargaining units challenging this provision of the Settlement Agreement against a Federated bargaining unit, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend the Federated bargaining unit with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the

attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

### **Attorney's Fees**

1. \$1.257 million to the litigants (AFSCME-MEF and CEO; IFPTE Local 21-AEA, AMSP and CAMP; and OE#3) within 30 days of the settlement framework being approved by Council in open session.
  - a. AFSCME (MEF and CEO) shall not be entitled to any more in Attorneys' Fees and expenses related to the litigation and resolution of Measure B, and are not entitled to final and binding arbitration regarding Attorney's Fees.
  - b. The City and IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B.
    - i. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
    - ii. The City shall pay the arbitrator's fees and costs, including court reporter
    - iii. The parties agree that the issue presented shall be: Whether IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 are entitled, under binding statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation and resolution of Measure B? If so, in what amounts?

## Quo Warranto/Ballot Measure Implementation Plan

1. The Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3) agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, all the Federated bargaining units shall endorse the ballot measure.
2. As agreed upon by the City and the Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3), the proposed quo warranto implementation plan shall be followed by the parties in the manner described below.

Step	Time	Action
1.	Immediately upon signature of the Framework by the litigants	Parties ask for a stay in appellate proceedings (Lucas ruling). AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP), and OE#3 will also ask for a stay in the PERB proceedings until March 31, 2016. So long as the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
2.	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> <li>• Global settlement involving all litigants (including retirees) and bargaining unit representatives</li> <li>• Entered into for purposes of settlement</li> </ul>

		<ul style="list-style-type: none"> <li>• Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith</li> <li>• Non-precedential for any purpose</li> </ul>
3	Immediately after #2	Begin drafting ordinances. Begin identifying ordinances implemented as a result of Measure B.
5	Immediately after #2	Parties negotiate charter language, pursuant to Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan," simultaneous with agreement on stipulated facts, order and judgment.
6	Simultaneous with #5	<p>Although the Federated Bargaining Units are not parties to the pending litigation in Santa Clara Superior Court Case No. 1-13-CV-245503 ("Quo Warranto Case"), the Federated Bargaining Units will support the City and SJPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only)</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> <li>• history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation;</li> <li>• changes to the proposed ballot language, including post-impasse changes;</li> <li>• tension between City's powers and MIMBA and effort to harmonize through Seal Beach negotiations – as described on pages 3-4 of Attorney General opinion No. 12-605</li> <li>• language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MIMBA issue);</li> <li>• the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable;</li> <li>• the desirability of finding a solution that is collaborative</li> <li>• financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable;</li> <li>• Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MIMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.</li> </ul>

**ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK**

*Evidence Code Section 1152*

**November 23, 2015**

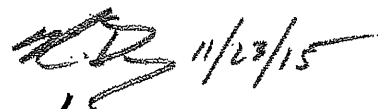

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		<ul style="list-style-type: none"> <li>Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate.</li> <li>Agreement that Resolution No. 76158 shall be null and void.</li> <li>Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans. Stipulated Judgment shall reflect that Measure B shall be invalidated.</li> </ul>
7	Upon completion of #5 and #6	<ul style="list-style-type: none"> <li>Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.</li> </ul>
8	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> <li>Formally adopt ordinances to implement Settlement Framework and replace Measure B.</li> <li>At such time as the judgment becomes final and the Quo Warranto issues, or the voters pass a substitute measure supported by the Parties, all parties dismiss/withdraw all complaints, unfair practice charges, etc.</li> </ul>
9	January 2016	<ul style="list-style-type: none"> <li>Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan) to be completed by July 2016</li> </ul>
10	Third Party Litigation	All Federated bargaining units (except ALP) agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
11	Immediately upon: (1) retirees not settling their litigation; or (2) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework agreed to by the Federated bargaining units for placement on the ballot in November 2016. The Parties will begin this process immediately in January 2016 if either the retirees have not settled or the quo warranto process has not been completed.

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by the Federated bargaining units.

The Federated Bargaining Units and the City shall in good faith work toward implementing this agreement, and neither party shall take any action to undermine or subvert the terms and benefits provided by this agreement.

 11/23/15  
  
QEM 11/23/15  
Ces 11/23/15

MB 11/23/15  
MB 11/23/15  
ZWT 11/23/15  
yae 11/23/15  
 11-23-15

Mano Mercado  
for JS 11/23/15  
MM 11/23/15  
LC 11/23/15  
 12/4/15

J.C. 12-3-15  
MTT 12-3-15  
SV 12/4/15  
TCF 12/14/15 ABMEI

**SIDE LETTER AGREEMENT**

Between

The City of San Jose

And

The Association of Building, Mechanical and Electrical Inspectors (ABMEI)  
The Association of Engineers and Architects, IFPTE Local 21 (AEA)  
The Association of Legal Professionals (ALP)  
The Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)  
The City Association of Management Personnel, IFPTE Local 21 (CAMP)  
The Confidential Employees' Organization, AFCME Local 101 (CEO)  
The San Jose Fire Fighters, IAFF Local 230 (IAFF)  
The International Brotherhood of Electrical Workers, Local No. 332 (IBEW)  
The Municipal Employees' Federation, AFSCME Local 101 (MEF)  
The International Union of Operating Engineers, Local No. 3 (OE#3)  
and  
The San Jose Police Officers' Association (POA)

**Alternative Pension Reform Act**

The parties agree to the terms of the attached ballot measure, entitled the "Alternative Pension Reform Act" (hereafter, "Act"), for consideration by City Council to be placed before the voters of the City of San Jose on the November 2016 ballot.

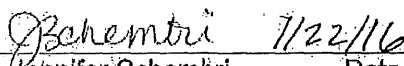
The parties agree that they have met and conferred in good faith, and that this agreement fulfills the City's Seal Beach bargaining obligations related to the Act.

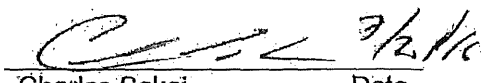
The Unions shall endorse the Ballot Measure.

This agreement shall become effective when signed by all parties below and adopted by City Council.

**For the City:**


  
Norberto Duenas  
City Manager  
Date 7/22/16


  
Jennifer Schembri  
Director of Employee Relations  
Date 7/22/16

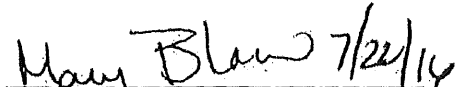
  
Charles Sakai  
Labor Consultant  
Date 7/22/16

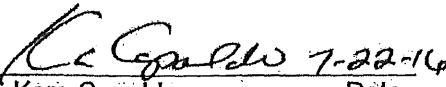
Side Letter Agreement – "Alternative Pension Reform Act" Ballot Measure Language  
July 21, 2016  
Page 2 of 2

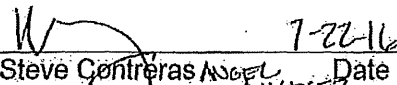
For the Unions:

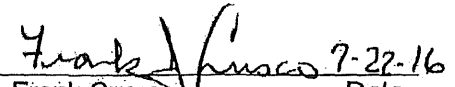
 8/2/16  
Date  
Gregg Adam  
Legal Counsel, POA

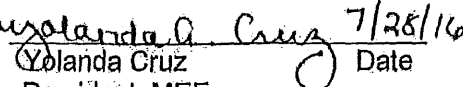
 7-26-16  
Date  
Charles Allen  
AFSCME Local 101


 7/22/16  
Date  
Mary Blanco  
OE#3

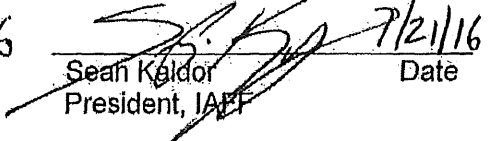
 7-22-16  
Date  
Kara Capaldo  
President, CAMP

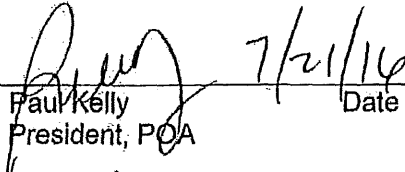
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Date  
Steve Contreras  
President, AMSP

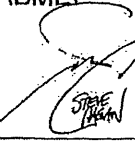
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Date  
Frank Crusco  
Chief Steward, IBEW

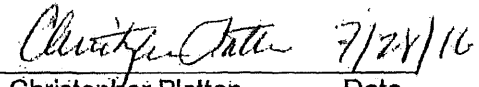
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Date  
Yolanda Cruz  
President, MEF

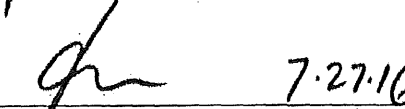
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Date  
Peter Fenerin  
President, ABMEI

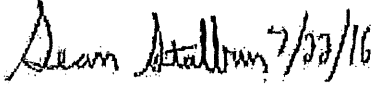
 7/21/16  
Date  
Sean Kaldor  
President, IAFF


 7/21/16  
Date  
Paul Kelly  
President, POA

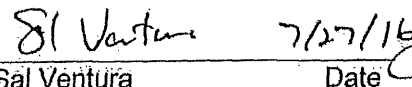
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Date  
Steve Pagan  
AEA

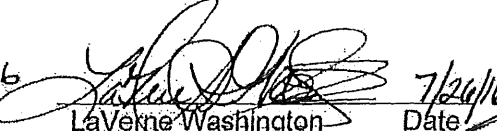
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Date  
Christopher Platten  
Legal Counsel

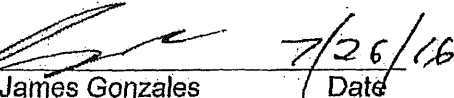
 7-27-16  
Date  
Tom Saggau  
Labor Consultant

 7/27/16  
Date  
Sean Stalbaum  
IFPTE Local 21

 7/22/2016  
Date  
Vera Todobrov  
ALP

 7/27/16  
Date  
Sal Ventura  
IBEW

 7/26/16  
Date  
LaVonne Washington  
President, CEO

 7/26/16  
Date  
James Gonzales  
Vice President, POA

## ALTERNATIVE PENSION REFORM ACT

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*Alternative Pension Reform Act.*"

### **Section 1501-A: Intent.**

The City of San Jose's financial ability to provide basic services is essential to the health, safety, quality of life and well-being of its residents. This Act is intended to strengthen the City's financial ability to ensure the City can provide reasonable and sustainable post-employment benefits while at the same time delivering essential city services to the residents of San Jose. This Act is further designed to ensure that no future defined retirement benefit increases occur without voter approval.

### **Section 1502-A. Act Supersedes All Conflicting Provisions**

The Sections of Article XV-A enacted by the voters pursuant to the ballot measure known as Measure B in 2012 are hereby replaced in their entirety by the following provisions. The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension, or postemployment benefit provisions in the Charter, ordinances, resolutions, or other enactments.

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

### **Section 1503-A. Reservation of Voter Authority**

- (a) There shall be no enhancements to defined retirement benefits in effect as of January 1, 2017, without voter approval. A defined retirement benefit is any defined post-employment benefit program, including defined benefit pension plans and defined benefit retiree healthcare benefits. An enhancement is any change to defined retirement benefits, including any change to pension or retiree healthcare benefits or retirement formula that increases the total aggregate cost of the benefit in terms of normal cost and unfunded liability as determined by the Retirement Board's actuary. This does not include other changes which do not directly modify specific defined retirement benefits, including but not limited to any medical plan design changes, subsequent compensation increases which may increase an employee's final compensation, or any assumption changes as determined by the Retirement Board.
- (b) If the State Legislature or the voters of the State of California enact a requirement of voter approval for the continuation of defined pension benefits, the voters of the City of San Jose hereby approve the continuation of the pension benefits in existence at the time of passage of the State measure including those established by this measure.

### **Section 1504-A: Retirement Benefits – Tier 2**

The Tier 2 retirement plan shall include the following benefits listed below. This retirement program shall be referred to as "Tier 2" and shall be effective for employees hired on or after the following dates except as otherwise provided in this section: (1) Sworn Police Officers: August 4, 2013; (2) Sworn Firefighters: January 2, 2015 and (3) Federated: September 30, 2012. Employees initially hired before the effective date of Tier 2 shall be Tier 1 employees, even if subsequently rehired. Employees who qualify as "classic" lateral employees

under the Public Employees' Pension Reform Act and are initially hired by the City of San Jose on or after January 1, 2013, are considered Tier 1 employees.

- (a) **Cost Sharing.** The City's cost for the Tier 2 defined benefit plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities), except as provided herein. Normal cost shall always be split 50/50. In the event an unfunded liability is determined to exist, employees will contribute toward the unfunded liability in increasing increments of 0.33% per year, with the City paying the balance of the unfunded liability, until such time that the unfunded liability is shared 50/50 between the employer and employee.
- (b) **Age.** The age of eligibility for service retirement shall be 57 for employees in the Police and Fire Retirement Plans and 62 for employees in the Federated Retirement System. Earlier Retirement may be permitted with a reduction in pension benefit by a factor of 7% per year for employees in the Police and Fire Retirement Plan and a reduction in pension benefit by a factor of 5% per year for employees in the Federated Retirement System. An employee is not eligible for a service retirement earlier than the age of 50 for employees in the Police and Fire Retirement Plan or age 55 for employees in the Federated Retirement System. Tier 2 employees shall be eligible for a service retirement after earning five years of retirement service credit.
- (c) **COLA.** Cost of living adjustments, or COLA, shall be equal to the increase in the Consumer Price Index (CPI), defined as San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-Urban Consumers, December to December, with the following limitations:
  - 1. For Police and Fire Retirement Plan members, cost of living adjustments applicable to the retirement allowance shall be the lesser of the Consumer Price Index (CPI), or 2.0%.
  - 2. For Federated Retirement System members, cost of living adjustments applicable to the retirement allowance shall be the lesser of CPI or:
    - a. 1-10 total years of City service and hired after the effective date of the implementing ordinances of the revised Tier 2: 1.25%
    - b. 1-10 years total years of City service and hired before the effective date of the implementing ordinances of the revised Tier 2: 1.5%
    - c. 11-20 total years of City service: 1.5%
    - d. 21-25 total years of City service: 1.75%
    - e. 26 or more total years of City service: 2.0%
  - 3. The first COLA adjustment will be prorated based on the number of months retired in the first calendar year of retirement.
- (d) **Final Compensation.** "Final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation, except members of the Police and Fire Plan whose pay shall include the same premium pays as Tier 1 members.
- (e) **Maximum Allowance and Accrual Rate.** For Police and Fire Plan members, service retirement benefits shall be capped at a maximum of 80% of final compensation for an employee who has 30 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on August 25, 2015. For Federated Retirement System members, service retirement benefits shall be capped at a maximum of 70% of final compensation for an employee who has 35 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on December 15, 2015, and January 12, 2016.

- (f) **Year of Service.** An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

**Section 1505-A: Disability Retirements**

- (a) The definition of "disability" shall be that as contained in the San Jose Municipal Code in Sections 3.36.900 and 3.28.1210 as of the date of this measure.
- (b) Each plan member seeking a disability retirement shall have their disability determined by a panel of medical experts appointed by the Retirement Boards.
- (c) The independent panel of medical experts will make their determination based upon majority vote, which may be appealed to an administrative law judge.

**Section 1506-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") has been discontinued, and the assets returned to the appropriate retirement trust fund. In the event assets are required to be retained in the SRBR, no supplemental payments shall be permitted from that fund without voter approval.

The SRBR will be replaced with a Guaranteed Purchasing Power (GPP) benefit for all Tier 1 retirees. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power of their original pension benefit effective with the date of the retiree's retirement. The GPP will apply in limited circumstances (for example, when inflation exceeds the COLA for Tier 1 retirees for an extended period of time). Any calculated benefit will be paid annually in February.

**Section 1507-A: Retiree Healthcare**

The defined benefit retiree healthcare plan will be closed to new employees as defined by the San Jose Municipal Code in Chapter 3.36, Part 1 and Chapter 3.28, Part 1.

**Section 1508-A: Actuarial Soundness (for both pension and retiree healthcare plans)**

- (a) In recognition of the interests of the taxpayers and the responsibilities to the plan beneficiaries, all pension and retiree healthcare plans shall be operated in conformance with Article XVI, Section 17 of the California Constitution. This includes but is not limited to:
1. All plans and their trustees shall assure prompt delivery of benefits and related services to participants and their beneficiaries;
  2. All plans shall be subject to an annual actuarial analysis that is publicly disclosed in order to assure the plan has sufficient assets;
  3. All plan trustees shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;
  4. All plan trustees shall diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is not prudent to do so;
  5. Determine contribution rates on a stated contribution policy, developed by the retirement system boards and;

6. When investing the assets of the plans, the objective of all plan trustees shall be to maximize the rate of return without undue risk of loss while having proper regard to the funding objectives of the plans and the volatility of the plans' contributions as a percentage of payroll.

**Section 1509-A: Retirement Contributions**

There shall be no offset to normal cost contribution rates in the event plan funding exceeds 100%. Both the City and employees shall always make the full annual required plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

**Section 1510-A: No Retroactive Defined Retirement Benefit Enhancements**

- (a) Any enhancement to a member's defined retirement benefit adopted on or after January 1, 2017, shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.
- (b) If a change to a member's retirement membership classification or a change in employment results in an enhancement in the retirement formula or defined retirement benefits applicable to that member, except as otherwise provided under the plans as of [effective date of ordinance], that enhancement shall apply only to service performed on or after the effective date of the change and shall not be applied to any service performed prior to the effective date of the change.
- (c) "Operative date" would be the date that any resolution or ordinance implementing the enhancement to a member's defined retirement formula or defined retirement benefit adopted by the City Council becomes effective.

**Section 1511-A: Severability**

This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect.



# SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS (ABMEI)  
THE ASSOCIATION OF ENGINEERS AND ARCHITECTS, IFPTE LOCAL 21 (AEA)  
THE ASSOCIATION OF LEGAL PROFESSIONALS (ALP)  
THE ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL, IFPTE LOCAL 21 (AMSP)  
THE CITY ASSOCIATION OF MANAGEMENT PERSONNEL, IFPTE LOCAL 21 (CAMP)  
CONFIDENTIAL EMPLOYEES' ORGANIZATION, AFSCME LOCAL NO 101 (CEO)  
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO 332 (IBEW)  
MUNICIPAL EMPLOYEES' FEDERATION, AFSCME LOCAL NO 101 (MEF)  
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO 3 (OE#3)

## **Federated Alternative Pension Reform Settlement Framework (Amended Terms)**

### **Background**

On or about November/December 2015, the City of San Jose (City) and ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3 (collectively, Federated Bargaining Units) reached agreement on the Federated Alternative Pension Reform Settlement Framework (Federated Framework). As the City has moved to implement the terms of the Federated Framework, the City and the Federated Bargaining Units have updated certain terms of the Framework. This Side Letter Agreement is to memorialize the amended terms that the City and the Federated Bargaining Units have agreed upon.

### **Amended Framework Terms**

The parties hereby agree to the following amendments to the terms of the Federated Framework, and the parties agree that the San Jose Municipal Code shall be revised to reflect the following amended terms:

<b>Federated Framework</b>		<b>Amended Terms</b>
<b>Issue</b>	<b>Section</b>	
Tier 2 Retirement Benefits	10(a)	"Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between <u>the all current and future Tier 2 employees</u> and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability."

Federated Framework		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	18	<p>“Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1 <u>so long as the former Tier 1 employee did not withdraw funds from the plan via a return of contributions.</u> Former Tier 1 employees who withdrew funds from the plan via a return of contributions shall remain in Tier 2 or be placed in Tier 2 upon rehire, and shall not be allowed to redeposit funds for the purpose of being considered Tier 1.”</p>
Retiree Healthcare	2	<p>a. Kaiser NCAL4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members</p> <p>b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan</p> <p>c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.</p> <p>d. Any changes to the "Floor" shall be by mutual agreement only.</p> <p>e. <u>Members in the VEBA will not be eligible to purchase into the City's healthcare (medical and dental) plans before 5 years of service with the City of San Jose.</u></p> <p>f. <u>Eligible members in the VEBA shall be able to purchase into the City's healthcare (medical and dental) plans at a retiree only rate, and not at a blended rate with active employees."</u></p>
Retiree Healthcare	5	<p>“The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. <u>Eligible retirees who receive retiree healthcare coverage as a dependent of another City employee or retiree are not eligible for the family in lieu premium credit; he or she may elect the single in lieu premium credit.</u> If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.”</p>
Federated Framework		Amended Terms
Issue	Section	
Retiree Healthcare	7	<p>“The VEBA contribution rate for all members in classifications represented by ABMEI, CEO, IBEW, MEF and OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be <u>3.5%4.5%</u> of base pay. The <u>VEBA contribution rate for all members in classifications represented by AEA, ALP, AMSP and CAMP who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 2.5% of base pay."</u></p>

Side Letter Agreement – Federated Alternative Pension Reform Settlement Framework (Amended Terms)

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Retiree Healthcare	8	"Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare."
Retiree Healthcare	9	"All Tier 2 <del>2A</del> employees (except Tier 2A members those represented by <del>OE#3 and ABMEI</del> ) will <del>not be eligible for mandatorily be removed from</del> the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. <b><i>This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.</i></b> The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA."
Retiree Healthcare	10	"Tier 2A employees <del>represented by OE#3 and ABMEI</del> , so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees <del>represented by OE#3 and ABMEI</del> who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees in classifications represented by <del>ABMEI, CEO, IBEW, MEF and OE#3</del> who opt out of the defined benefit plan and are mandated to join the VEBA plan will be <del>3.5%</del> <u>4.5%</u> of base pay. <del>The VEBA contribution rate for all Tier 2A employees in classifications represented by AEA, ALP, AMSP and CAMP who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 2.5% of base pay.</del> "
Retiree Healthcare		<ul style="list-style-type: none"> <li>Regarding the VEBA Advisory Committee, the number of members on the committee, qualifications, selection process and term of office shall be established by a negotiated agreement between the City and all labor groups participating in the plan, including unrepresented members. The requirement that an agreement shall be reached by June 1, 2017, shall be removed.</li> </ul>
Disability Definition And Process	6	"Independent panel of experts appointed by <del>5</del> 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications."
<b>Federated Framework</b>		<b>Amended Terms</b>
<b>Issue</b>	<b>Section</b>	
Disability Definition And Process	6(b)	"Each member shall have a four-year term and meet the following minimum qualifications: <ul style="list-style-type: none"> <li>i. 10 years of practice after completion of residency</li> <li>ii. Practicing or retired Board Certified physician</li> <li>iii. <del>Not a prior or current City employee</del></li> <li><del>iv.</del> No experience providing the City or retirement boards with medical services, except for prior service on the medical panel</li> </ul>

		<ul style="list-style-type: none"> <li>iv. No experience as a Qualified Medical Evaluator <del>or Agreed Medical Evaluator</del></li> <li>vi. Varying medical experience”</li> </ul>
Supplemental Retiree Benefit Reserve (SRBR)	2(a)	<p>“2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement</p> <ul style="list-style-type: none"> <li>a. Beginning January <del>2018</del><del>2016</del> and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.</li> <li>c. The supplemental GPP payment to qualifying retirees will be paid annually <u>as a line item on the February pension check in a separate check</u>, beginning February <del>2018</del><del>2016</del>, and each February thereafter.”</li> </ul>

The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.

This Side Letter Agreement shall be effective when signed by all parties below.

FOR THE CITY:

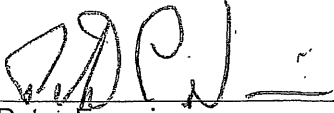


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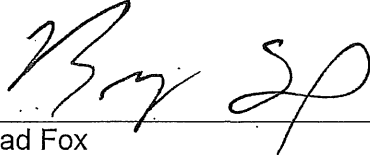
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 Jennifer Schembri  
 Director of Employee Relations

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 Date

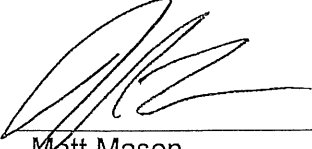
**FOR THE UNIONS:**

  
\_\_\_\_\_  
Peter Fenerin  
President, ABMEI


10/12/2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Brad Fox  
President, AEA

9/27/17  
\_\_\_\_\_  
Date

  
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Matt Mason  
Business Representative, IFPTE

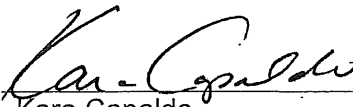
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Date

  
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Elizabeth Klotz  
President, ALP

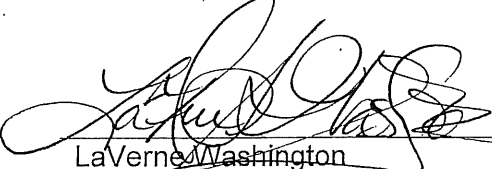
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Date

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Steve Contreras  
President, AMSP


\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kara Capaldo  
President, CAMP


9/20/17  
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Date

  
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LaVerne Washington  
President, CEO

10/12/17  
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Date

  
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Charles Allen  
Business Representative, AFSCME

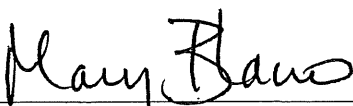
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Frank Crusco  
Chief Steward, IBEW

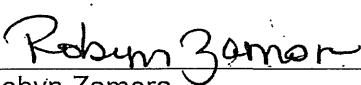
10-11-2017  
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Date

\_\_\_\_\_  
Sal Ventura  
Business Representative, IBEW

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mary Blanco  
Business Representative, OE#3

10/12/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robyn Zamora  
President, MEF

10/12/17  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Christopher Platten  
Legal Counsel

\_\_\_\_\_  
Date