

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between the City of San José (“City”) and the Operating Engineers Local 3, International Union of Operating Engineers (“IUOE”) (collectively, the “Parties”).

RECITALS

A. Whereas, on November 23, 2015, the City entered into an Alternative Pension Reform Settlement Framework (“Settlement Framework”) with IUOE and other employee organizations to resolve litigation concerning the validity of “Measure B,” a voter-approved amendment to the City Charter. The Settlement Framework authorized the payment of certain attorneys’ fees and costs and provided the Parties may submit to “final and binding arbitration over any additional claims over attorneys’ fees and expenses related to the litigation and resolution of Measure B.” In particular, the Parties agreed to present the following issue for arbitration: “Whether the Unions are entitled, under any statutory or common law basis, to additional attorneys’ fees and/or expenses related to litigation (including administrative proceedings) and resolution of Measure B? If so, in what amounts?”

B. Whereas, on July 18, 2019, IUOE sent the City a formal demand for arbitration under the Settlement Framework. In its demand, IUOE claimed it was entitled to additional attorneys’ fees and expenses under the Settlement Framework for various pre- and post-settlement activities, as well as fees incurred for having to enforce its alleged right to a fee recovery (i.e., “fees on fees”).

C. Whereas, the Parties submitted IUOE’s demand to JAMS (Reference No. 1100106262) (all arbitration proceedings under this Reference Number collectively referred to as the “Arbitration”) and selected the Hon. Richard Kramer (ret.) to serve as arbitrator. During these proceedings, IUOE notified the City that it would only be seeking attorneys’ fees and expenses incurred after the Settlement Framework was entered into. In addition, IUOE provided the City with spreadsheets identifying the attorney hours and expenses IUOE claimed to have incurred in connection with its post-settlement activities for which it was seeking reimbursement.

D. Whereas, the Parties have engaged in arms-length negotiations in an attempt to resolve their differences, and throughout these negotiations all Parties were, and continue to be, represented by counsel.

E. Whereas, the Parties wish to avoid the potential uncertainty, expense, and delay of arbitration and have therefore, based upon their negotiations, agreed to a settlement of the Parties’ dispute.

F. Whereas, as a result of their negotiations, the Parties wish to resolve and release all disputes and claims raised or that could have been raised by IUOE against the City with regard to IUOE’s claims under the Settlement Framework for additional attorneys’ fees and expenses related to the litigation and resolution of Measure B.

NOW THEREFORE, in consideration for the mutual promises and undertakings of the Parties as set forth below, the Parties enter into this Agreement and agree as follows:

TERMS

1. **Agreement Subject to Approval by City Council and Effective Date.** This Agreement shall only become effective upon its approval by the City Council for the City of San José (“City Council”) in an open session meeting, and its execution by the Parties. Should the City Council fail to approve this Agreement, this Agreement and all of its terms and provisions shall become null and void and the Parties will revert to their respective rights, obligations and defenses that existed prior to this Agreement. This Agreement shall become effective immediately upon approval by the City Council and execution by the Parties.

2. **Settlement Payment.** Within 30 calendar days from the Effective Date of this Agreement, the City shall issue a check for \$10,000.00 made payable to IUOE. IUOE acknowledges and agrees that this payment represents the mutually agreed-upon compromise of IUOE’s claims for additional attorneys’ fees and expenses under the Settlement Framework and that following this payment, the City will have no further obligation whatsoever to reimburse IUOE for any additional attorneys’ fees and expenses related to the litigation and resolution of Measure B, including any attorneys’ fees and expenses IUOE may have incurred in connection with the Arbitration.

3. **Release of Claims.** IUOE and its representatives, executors, agents, attorneys, administrators, successors-in-interest, and assigns, irrevocably and unconditionally release and discharge the City and all of its departments, officers, employees, attorneys and agents and any other person acting by, through, or in concert with it, from any and all lawsuits, claims, actions, demands or other legal responsibilities of any kind which IUOE has, or may have, against the City relating to claims arising under the Settlement Framework for additional attorneys’ fees and expenses and/or any other claims for IUOE’s attorneys’ fees and expenses related to litigation and resolution of Measure B, including fees and expenses IUOE incurred in (1) *San Jose Police Officers’ Association v. City of San Jose, Board of Administration for Fire and Police Department Plan for City of San Jose and Does 1 – 10 Inclusive*, Santa Clara County Superior Court Case No. 1-12-CV-225926 [consolidated with Case Nos. 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, 1-12-CV-227864 and 1-12-CV-233660] and Court of Appeal Case Nos. H040979, H042074, and H042473; (2) *People of the State of California ex rel. San Jose Police Officers’ Association v. City of San Jose and City Council of San Jose*, Santa Clara County Superior Court Case No. 1-13-CV-245503 and Court of Appeal Case Nos. H043540 and H043727; (3) *Operating Engineers Local 3, International Union of Operating Engineers v. City of San Jose*, PERB Case No. SF-CE-900-M; (4) drafting and negotiation of Measure F; (5) drafting and negotiation of City ordinances and other measures to implement the Settlement Framework and/or Measure F; and (6) prosecuting IUOE’s claims in the Arbitration. IUOE acknowledges and agrees that the release it provides in this paragraph is an essential and material term of this Agreement and without such release, no settlement would have been reached by the Parties.

4. **Release of Unknown Claims.** IUOE expressly acknowledges that any and all rights granted to it under Section 1542 of the California Civil Code are hereby expressly waived as to the claims being released by IUOE under paragraph 3 of this Agreement. Section 1542 of the California Civil Code provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

IUOE acknowledges that it understands the effect of this waiver pursuant to California Civil Code Section 1542 and that it is represented and has been advised of this release by its counsel.

IUOE's Initials: OR

5. **Unanticipated Consequences.** The Parties recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and the Parties hereby expressly assume any and all risks thereof and further expressly assume the risks of waiving the rights provided by California Civil Code Section 1542.

6. **No Admissions.** This Agreement affects claims and demands that are disputed and by executing this Agreement, no Party admits or concedes any of the claims, defenses, or allegations which were raised or could be raised by any other Party or third party. Neither this Agreement nor any part of this Agreement shall be construed to be an admission by any Party, nor shall this Agreement nor any part of it, nor any settlement negotiations or earlier drafts of this Agreement, be admissible in any proceedings as evidence of such an admission.

7. **Non-Precedential.** The Parties agree that the terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis by the Parties to seek or justify similar terms in any subsequent case and it may not be used by anyone else to seek to justify similar terms in any subsequent case.

8. **Attorneys' Fees and Costs.** Except as provided for herein, each Party will bear its own attorneys' fees and costs in connection with the matters listed in paragraph 3.

9. **Knowledge of Parties.** The Parties understand and agree to the terms and conditions contained herein, and enter into this Agreement knowingly and voluntarily. IUOE has been advised that it has the right to seek legal advice with respect to this Agreement, including the release, and has had the opportunity to consult with counsel. The Parties have investigated the facts pertaining to the settlement and the Agreement and all matters pertaining thereto as deemed necessary. The Parties have relied upon their judgment, belief, knowledge, understanding, and expertise after consultation with their counsel concerning the legal effect of

the settlement and its terms. By signing this document, the Parties signify their full understanding and acceptance of the Agreement.

10. **Binding on Successors and Assigns.** This Agreement shall bind and inure to the benefit of each of the Parties hereto, their spouses, domestic partners, children, heirs, estates, administrators, representatives, executors, attorneys, successors and assigns.

11. **Warranty of Non-Assignment.** The Parties warrant that they have not assigned any of the claims or portions of the claims that are the subject of this Agreement.

12. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any claim or action arising out of this Agreement shall be submitted to final and binding arbitration before JAMS.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. No other promise or inducement has been offered for this Agreement. Any amendments to this Agreement must be in writing, signed by duly authorized representatives of the City and IUOE, and must state that the Parties intend to amend the Agreement.

14. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

15. **Mutual Drafting.** This Agreement shall be deemed to have been jointly drafted by the Parties and shall be governed by and construed in accordance with the laws of the State of California. Each Party shall bear its own associated costs of preparing this Agreement, including attorneys' fees and expenses.

16. **Authority to Execute.** Each Party hereto warrants to the other Party or Parties that he, she or it has the full power and authority to execute, deliver and perform under this Agreement and that any needed consent or approval from any other person has been obtained.

17. **Disclosure of Terms.** The Parties understand and consent that the City may be required to disclose the terms of this Agreement pursuant to the requirements of the California Public Records Act (Cal. Gov't Code § 6250 *et seq.*) and the provisions of any other law or regulation requiring the disclosure of information by public entities.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one-in-the-same document.

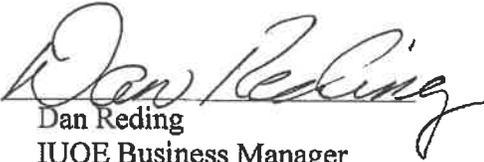
PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A FULL RELEASE OF LEGAL CLAIMS, BOTH KNOWN AND UNKNOWN.

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ACCEPTED AND AGREED:

Dated: 10/19, 2020

OPERATING ENGINEERS LOCAL 3,
INTERNATIONAL UNION OF
OPERATING ENGINEERS

By: 
Dan Reding
IUOE Business Manager

Dated: 10/21, 2020

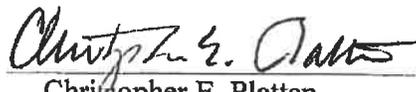
CITY OF SAN JOSÉ

By: 
Jennifer Schembri
Director of Human Resources
Director of the City Manager's
Office of Employee Relations

APPROVED AS TO FORM AND CONTENT:

Dated: 10/15, 2020

WYLIE, McBRIDE, PATTEN & RENNER

By: 
Christopher E. Platten
Attorney for IUOE

Dated: _____, 2020

RENNE PUBLIC LAW GROUP

By: _____
Linda M. Ross
Attorney for City of San José