



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: April 19, 2018

Approved

Date

4/19/18

SUBJECT: ESTABLISHMENT OF THE VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION ("VEBA") ADVISORY COMMITTEE

RECOMMENDATION

- (a) Adopt a resolution to provide for the number of members, qualifications, selection process, and term of office for members of the Voluntary Employees Beneficiary Association ("VEBA") Advisory Committee for the Police and Fire Voluntary Employees Beneficiary Association and the Federated Employees' Voluntary Employees Beneficiary Association.
- (b) Approve an ordinance amending various sections of Chapter 2.08 of Title 2 of the San Jose Municipal Code to establish the provisions for the administration of the Voluntary Employees Beneficiary Association Advisory Committee.

OUTCOME

Adoption of a resolution and the approval of an ordinance amending sections 2.08.080, 2.08.090, 2.08.130, 2.08.150 of Chapter 2.08 of Title 2 of the San Jose Municipal Code to provide for the number of members, qualifications, selection process, and term of office for members of the VEBA Advisory Committee will allow the City's eleven (11) bargaining units and unrepresented employees to select members and establish the VEBA Advisory Committee.

BACKGROUND

Pursuant to the Alternative Pension Reform Frameworks and Measure F, the City has established the Police and Fire VEBA under Chapter 3.57 of the San Jose Municipal Code and the Federated Employees' VEBA under Chapter 3.58 of the San Jose Municipal Code. A VEBA is a tax-exempt trust instrument authorized by Internal Revenue Code 501(c)(9) through which eligible healthcare benefits can be reimbursed. The City's VEBAs are set up to reimburse eligible medical expenses in retirement for their respective members.

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San José Municipal Code Sections 3.57.210 and 3.58.210 provide that the VEBA Plans shall be administered by the VEBA Advisory Committee and that the number of members on the committee, qualifications, selection process and term of office shall be established by negotiated agreement among and between the City and all labor groups participating in the Plans, including unrepresented members; and once agreement is reached, the matter shall be referred to and adopted by resolution of the City Council in the form of a resolution.

The City and all labor groups negotiated a Side Letter Agreement effective January 26, 2018 regarding the VEBA Advisory Committee, which is attached. Based on the Side Letter Agreement, the proposed Resolution and Ordinance shall establish the number of members, qualifications, selection process, and term of office for members of the VEBA Advisory Committee. Please be advised that Council Policy 0-4 (Consolidated Policy Governing Boards and Commissions) will not apply to the VEBA Advisory Committee. The VEBA Advisory Committee will be governed by San Jose Municipal Code Chapter 2.08 and the accompanying resolution to this memorandum.

ANALYSIS

Upon adoption of the proposed resolution, the City's labor groups and unrepresented members participating in the VEBA plans can move forward with the establishment of the VEBA Advisory Committee.

The proposed resolution includes the following sections:

- **Section 1: Selection of VEBA Committee Members**
The VEBA Advisory Committee will be comprised of five (5) members and will include one representative from IAFF, Local 230, one representative from the San Jose Police Officers Association, two representatives from the Federated bargaining units, and one unrepresented member.
- **Section 2: Terms of Office**
The term of each member shall be four (4) years and there are no term limits.
- **Section 3: Requirement of Active Employment**
Each member of the committee must be an active employee and a VEBA participant.
- **Section 4: Appointment of Members by City Council**
Nominated committee members must be appointed by the City Council as a part of the Council's routine business.
- **Section 5: Removal of Members by City Council**
A committee member may be removed from the committee for cause by the City Council.

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- **Section 6: Vacancies**

In the event a vacancy should occur in the office of any member prior to the expiration of a term, a successor shall be nominated for the unexpired portion of the member's term.

- **Section 7: Absence from Meetings**

A committee member will be deemed to have resigned from office if the member has unexcused absences from either (1) three consecutive meetings or (2) more than 25% of the total number of regular meetings during a calendar year.

- **Section 8: Members Not Compensated for Services**

Committee members shall not be compensated for their services by the VEBA plans.

- **Section 9: Members of the Committee to be Officers of the City**

The members of the VEBA Advisory Committee shall be officers of the City of San Jose.

The proposed ordinance will amend Sections 2.08.080, 2.08.090, 2.08.130, 2.08.150 of Chapter 2.08 of Title 2 of the San Jose Municipal Code to align with the terms in the Side Letter Agreement relating to the establishment of Advisory Committee's procedural rules and regulations, term limits, removal from the Advisory Committee, and quorums.

EVALUATION AND FOLLOW-UP

If the Council approves the proposed ordinance for publication, the ordinance will be placed on the Council agenda for final approval on May 15, 2018 and become effective 30 days later.

If the Council adopts the proposed resolution, the labor groups can move forward and nominate VEBA Advisory Committee members. The City Manager's Office will advise the Unit 99 forum of the vacancy for any potential nominations. These members will be appointed by City Council as routine business of the Council.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the May 1, 2018 City Council Meeting.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Human Resources Department.

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COMMISSION RECOMMENDATION/INPUT

There was no commission recommendation to this memorandum.

COST SUMMARY/IMPLICATIONS

There are no anticipated costs associated with the adoption of this Ordinance.

CEQA

Not a Project, File No. PP17-008, General Procedure or Policy Making.

/s/
JENNIFER SCHEMBRI
Director of Employee Relations

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

Attachment

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, AFSCME 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)

The City and the eleven (11) bargaining units agree to the language below regarding the Voluntary Employees' Beneficiary Association (VEBA) Advisory Committee.

A. Purpose

This purpose of this document is to define the VEBA Advisory Committee (the "VAC" or "Committee") for the San José Police and Fire Voluntary Employees Benefits Association and the San José Federated Voluntary Employees Benefits Association (collectively, "VEBA" or "VEBAs"), including its design, implementation and operation.

Once the Committee has been seated, it will direct the development of VEBA Administrative Policies and Procedures in collaboration with the VEBA Administrator and/or other independent consultant(s), as needed and consistent with the tax rules governing the tax-exempt status of voluntary employees' beneficiary associations under section 501(c)(9) of the Internal Revenue Code.

B. VEBA Advisory Committee (VAC) Design

1. The operation and administration of the VEBAs shall be the joint responsibility of the Trustees who shall be fiduciaries with respect to their duties in the operation and administration of the VEBAs.
2. All Trustees, shall be active employees who are members of the VEBAs established under Chapters 3.57 and 3.58 of Title 3 of the San José Municipal Code.

3. Trustees shall be appointed as soon as possible to June 1, 2018.
4. The VAC shall be composed of five (5) Trustees, as follows:
 - a) One (1) active member of San Jose Fire Fighters, IAFF Local 230 ("Local 230");
 - b) One (1) active member of the San José Police Officers' Association ("POA");
 - c) Two (2) active members of the Federated unions;
 - d) One (1) active member of unrepresented employees;
5. The term for each Trustee shall be four (4) years, except in the instance of death, resignation, or disqualification (e.g. exiting the VEBA Plan, leaving the Union, termination of employment, etc.) or as otherwise provided in this agreement or the VEBA Administrative Policies and Procedures. A Trustee may resign at any time with at least thirty (30) days written notice to the Chairperson and Co-Chairperson.
 - a) Unrepresented – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2019, and terms end every four years thereafter.
 - b) POA – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2020, and terms end every four years thereafter.
 - c) Local 230 – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2021, and terms end every four years thereafter.
 - d) Federated Unions – First appointment as soon as possible June 1, 2018. First terms end May 31, 2022, and terms end every four years thereafter.
6. The union representatives shall be nominated by the respective unions. The City Manager or designee shall nominate the unrepresented employee.
 1. The appointment of the employees to the VAC shall be routine business on the council agenda.
 2. The City Council will approve the nomination unless the Council finds a cause for rejection.
 3. Cause includes, but is not limited to, a failure to disclose all conflicts of interest, a significant potential for a conflict of interest to arise, the appearance of a conflict of interest, or the existence of a conflict of interest, and such other information as may be available that the Council finds would hinder the nominee' ability to carry out his or her fiduciary duty to the VEBA Plans or the participants and beneficiaries of such plans.
7. In the event of a mid-term vacancy, the unions and/or City Manager or designee shall conduct the process to nominate a replacement using the above definitions.
8. The Trustees shall select annually one of their members to act as Chairperson of the VAC and one to act as Co-Chairperson.
9. There are no term limits for Trustees. There are no term limits for the Chairperson or Co-chairperson.
10. Trustees shall not be compensated for their services by the VEBA Plan. Trustees shall be reimbursed by the VEBA Plan for all reasonable expenses paid properly and actually incurred in connection with the performance of their official duties as Trustees, as authorized by the Trustees. The VAC shall adopt a travel and expense reimbursement policy.
11. Trustees shall be provided with paid release time for attendance at committee meetings for any portion of the employee's assigned workday that coincides with attendance at committee

meetings. Trustees should use the Union Release Time (URT) code for any hours spent on authorized paid release time.

12. A Trustee may be removed by the City Council for cause as defined by Section 6.3. A member of the City bargaining units, the City Manager, or retired VEBA member may submit a written request for removal to City Council. Any such request shall state the grounds for which removal is sought.
 1. The City Clerk shall schedule a hearing before the City Council to consider any written request for removal of a Trustee.
 2. Notice of hearing shall be provided to the affected Trustee at least ten days prior to the date of the hearing.

After the hearing, the City Council may remove the Trustee if the council makes a written finding evidence of cause for removal.

C. Meetings

1. The VAC shall meet quarterly, or more frequently if the VAC deems it necessary.
2. With the exception of closed sessions, meetings of the Trustees shall be open to interested persons and follow the City of San José's open meeting rules and applicable law. The City will provide the meeting space necessary and will provide any necessary instruments to record the meetings pursuant to the open meeting rules.
3. A quorum of Trustees shall be necessary to conduct VAC business. A quorum shall consist of four (4) Trustees;
4. All VAC action requires an affirmative vote of at least three (3) Trustees, regardless of vacancies and regardless of whether the meeting consists of the full five-person Committee or the minimum four-person quorum.

D. Committee Financial Responsibilities

In addition to the responsibilities of the VAC provided by City of San Jose Municipal Code Chapters 3.57 and 3.58, the VAC as a whole has fiduciary responsibility for the management of the investment options available under the VEBA Plans. The Trustees shall have exclusive authority and discretion acting as the Trustees as provided herein to control and manage the operation and administration of the VEBA Plan. Each Trustee expressly accepts designation as a fiduciary and as a Trustee, and assumes the duties, responsibilities and obligations of Trustee as created in this agreement and under applicable law, including California Government Code sections 53620 and 53622. All Trustees shall receive and be required to attend Fiduciary training at the expense of the Plans.

The VAC reserves the right to delegate a portion of this fiduciary authority to the Chairperson and Co-Chairperson. However, delegation does not relieve any Trustee from joint and several fiduciary liability for the VEBAs.

E. Committee Decisions

1. Investments

- a. The VAC has fiduciary responsibility for the management of the investment options available under the VEBA Plans. The VAC shall be responsible for drafting an investment policy for the investment options with the investment advisor's input.
- b. The VAC shall determine the investment options available to VEBA members for their accounts under the VEBAs. These options shall be reviewed at least annually for appropriateness, which would include making assessments on the investment options using care, skill, prudence, and diligence to ensure the diversity of the options, to minimize the risk of investment losses, and to maximize the rate of return given the economic conditions at the time of review. The VAC shall utilize its investment advisor and/or vendor for review of the investment options using benchmarks of similarly situated investments in the market. The VAC will document the process of monitoring, benchmarking, and if necessary, changing investment options. The list of investment options shall be managed to provide a suitable range of strategies and asset classes to accommodate a wide spectrum of member objectives. All investment options shall be optimized to ensure they are competitive with their peers in terms of both performance and cost. The range of options and individual options shall also comply with the Board's fiduciary obligations, including any applicable limitations such as those provided under California Government Code section 53213.5 for individually directed investments by members.
- c. The VAC does not determine how individual member funds should be invested.

2. Medical Decisions and Reimbursements

- a. The VAC does not make medical decisions.

3. The plan shall provide its trustees with Liability Coverage to cover the performance of their duties.

4. The Trustees shall have the authority to enter into agreements on behalf of the VEBA Plans for the administration of the VEBA Plans, custody of VEBA Plan assets and for management of the investment options available under the VEBA Plans, where the fees to be paid under such an agreement are to be paid by the VEBA members or where there is no amount to be paid by the City under the agreement.

F. Conflict of Interest

Trustees shall be free from Conflicts of Interest. The term "Conflict of Interest" means any direct or indirect material, financial, personal, or legal impediment to the free exercise of judgment on behalf of the VEBA. A Trustee of the VEBA will be free of compromising influences and loyalties and will, at all

times, fulfill his or her responsibilities in good faith, solely on behalf of the VEBA members and beneficiaries. All Trustees will be required to fill out a Form 700 form.


Trustees who are paid salaries by the City or labor organizations do not have a conflict by virtue of receiving such salaries and are not prohibited from serving as Trustees. Trustees who hold any position with the City or who hold any position with a union are not conflicted by virtue of holding that position and are not prohibited from serving as Trustees.

G. The VEBA Administrator

The VEBA Administrator will hold VEBA assets and will be responsible for the general administration of the VEBA. The duties and responsibilities of the VEBA Administrator are established in an administrative service agreement between the VEBA Administrator and the VAC. The agreement with the VEBA Administrator will include provisions for receiving, holding, and disbursing the assets of the VEBAs. The VEBA Administrator must be qualified and licensed to do business in the State of California. The VEBA Administrator at the time the VEBA Plans are established shall be Voya Financial, Inc. The VEBA Administrator shall be under contract to the VAC, and the VAC has the authority to change the VEBA Administrator.


This Side Letter Agreement shall become effective when signed by all the parties below:

For the City:


 1/26/18

Jennifer Schembri Date
Director of Employee Relations


For the Unions:

 1/25/18

Gregg Adam Date
Legal Counsel, POA

 12-19-17


Charles Allen Date
AFSCME Local 101

 1/22/18

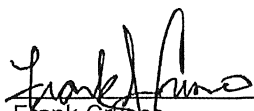
Mary Blanco Date
OE#3

 1/4/18

Kara Capaldo Date
President, CAMP

 1/18/18

Steve Contreras Date
President, AMSP


 1-10-2018

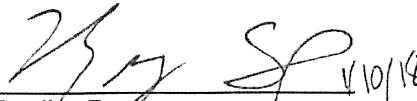
Frank Crisco Date
Chief Steward, IBEW

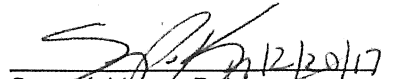
VEBA Advisory Committee Side Letter

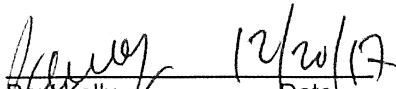
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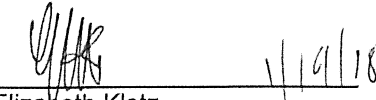
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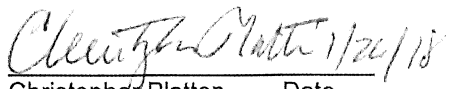

Peter Fenerin Date
President, ABMEI



Bradley Fox Date
President, AEA



Sean Kaldor Date
President, IAFF

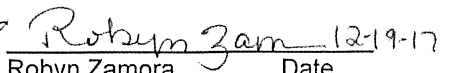

Paul Kelly Date
President, POA

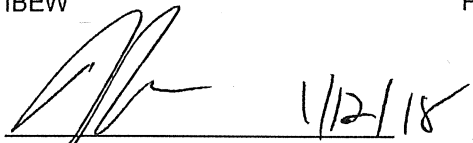

Elizabeth Klotz Date
President, ALP


Christopher Platten Date
Legal Counsel


Dan Rodriguez Date
IBEW


LaVerne Washington Date
President, CEO


Robyn Zamora Date
President, MEF


Matt Mason Date
Business Representative, IFPTE