



COUNCIL AGENDA: 10/3/2017

ITEM: 3.5 (17-139)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: September 21, 2017

Approved

Date

9/21/17

SUBJECT: APPROVAL OF AN ORDINANCE IMPLEMENTING ADDITIONAL CHANGES FROM THE ALTERNATIVE PENSION REFORM FRAMEWORK AGREEMENT AND THE IMPLEMENTATION OF MEASURE F RELATING TO THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN.

RECOMMENDATION

It is recommended that the City Council approve the ordinance amending various sections of Chapters 3.36 and 3.57 in Title 3 of the San Jose Municipal Code to implement additional revisions, including, but not limited, to pension cost-sharing, the independent medical review panel, the Voluntary Employees' Beneficiary Association and retiree healthcare based on the implementation of the Alternative Pension Reform Framework and the implementation of Measure F for members of the City of San Jose Police and Fire Department Retirement Plan.

OUTCOME

Approval of the ordinance will implement the additional changes resulting from the implementation of the Alternative Pension Reform Framework agreement and Measure F for the Police and Fire Department Retirement Plan.

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 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. On August 25, 2015, the City Council approved the terms of the Alternative Pension Reform

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Settlement Framework Agreement (Framework Agreement) for the two sworn bargaining units, the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, IAFF Local 230 (IAFF). Attached is the Framework Agreement with the sworn bargaining units (Attachment A).

The Framework Agreement includes, 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 which was passed by the voters 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).

ANALYSIS

Council approved the final adoption of the ordinance amending the Municipal Code with the changes made by the Alternative Pension Reform Framework and Measure F on February 28, 2017. These changes became effective on March 31, 2017. The City and sworn bargaining units engaged in further discussions based on the implementation of the changes to the Municipal Code. Based on those discussions, an agreement was reached on amendments to the Alternative Pension Reform Framework for various items related to pension and retiree healthcare (Attachment C). This Side Letter Agreement is the preceding item on the October 3, 2017 Council agenda.

The ordinance revises Chapters 3.36 and 3.57 of the City's Municipal Code to include the provisions of the Side Letter Agreement on the Amended Terms of the Alternative Pension Reform Framework. These changes are shown below:

- Clarifying that only those who left their funds in the retirement plan are allowed to be rehired into Tier 1;
- Amending the employee cost sharing for the retroactive benefit enhancements for Tier 2 employees to include all current and future Tier 2 employees;
- Clarifying the eligibility for VEBA members to purchase the City healthcare plans
- Extending the deadline to enroll in Medicare;
- Changing the contribution rate for those who opt-in to the VEBA;
- Removing the deadline to agree on the VEBA advisory committee;
- Clarifying that a retiree is only eligible for the single premium in-lieu credit if a retiree is married to another City employee or retiree;

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- Removing the minimum qualifications related to "prior or current City employee" and "Agreed Upon Medical Evaluator" from the independent medical panel; and
- Changing the first GPP payment to February 2018 and making the payment a line item on the pension check

It is important to note that the ordinance also clarifies that a member of the VEBA may begin to use the funds in their account if they either retire from the Police and Fire Department Retirement Plan or have a separation from service with the City and are retirement eligible under Chapter 3.36. This was the original intent of the Alternative Pension Reform Agreement and was not included in the Side Letter Agreement changes.

It is also important to note that the language in the City Charter based on Measure F will not change based on the ordinance.

On August 30, 2017, the City Administration submitted the proposed ordinance to the Police and Fire Department Retirement Plan Board (Police and Fire Board) for its consideration. The Board gave direction to its Counsel to provide comments to the City after Counsel discussed the ordinance changes with the actuary. As of the date of this memorandum, the retirement board's counsel has not provided the City with any additional comments.

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 October 17, 2017, and will become effective 30 days later.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the October 3, 2017, City Council Agenda.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

There were no commission recommendations on this item.

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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– Alternative Pension Reform Settlement Framework Agreement

Attachment B – Measure F

Attachment C – Side Letter Agreement on 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, the San Jose Fire Fighters, IAFF Local 230, and the San Jose Police Officers' Association have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The parties have reached the below framework for a tentative settlement of San Jose Police Officers' Association v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-22926, Sapien, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-13-CV-225928 (and associated actions), The People of the State of California ex rel. San Jose Police Officers' Association v. City of San Jose, Santa Clara County Superior Court, No. 1-13-CV245503 (quo warranto proceedings), International Association of Firefighters, Local 230 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-969-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.

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/litigants (including the retirees), and ratified by union membership and approved by the City Council.

MARCH 11th LETTER

In accordance with Mayor Sam Liccardo's letter on behalf of the City Council to all bargaining units dated March 11, 2015, inclusive of the direction from Councilmember Don Rocha's March 6, 2015, memorandum, the City Council is willing to pursue settlement of Measure B litigation through a quo warranto process in 2015, contingent on the Council's satisfaction that the following conditions have been met before the quo warranto process begins:

- 1. Agreement on an alternative strategy to implement pension reform and replace Measure B. Such agreement must achieve all reform objectives that the Council deems necessary to the public interest, including improved city services, and the sustainability of our retirement plans.*
- 2. The quo warranto strategy is legally viable and can be carried out on a timeline that would allow the Council sufficient time to pursue a 2016 ballot measure should a quo warranto strategy fail.*
- 3. All bargaining units have agreed to pursue the quo warranto strategy.*
- 4. The Council is satisfied that the quo warranto strategy does not impair the public interest.*

If agreements are not reached to end litigation with all plaintiffs in Measure B litigation, or if the process of quo warranto does not permit the replacement of Measure B with this or any other agreement, the City Council, Local 230 and the POA shall request a stay of all Measure B litigation to which they are involved in to permit this agreement to appear on a 2016 ballot as a measure to replace Measure B in its entirety with respect to police and fire participants of the Police & Fire Retirement Plan. If this ballot measure is enacted, all Measure B litigation involving Local 230, the POA and the City would be terminated and dismissed.

Retirement Memorandum of Agreement

1. The parties (The City of San Jose, San Jose Police Officers' Association and San Jose Fire Fighters, IAFF Local 230) shall enter into a Tripartite Memorandum of Agreement to memorialize all agreements related to retirement. The Tripartite MOA shall expire June 30, 2025.
2. The Tripartite MOA will be a binding agreement describing the terms of the final agreement between the parties and will be subject to any agreed-upon reopeners herein.

The current Tier 2 retirement plans for Police and Fire employees will be modified as follows:

1. Pension benefit based upon a back-loaded accrual rate as follows:
 - a. For each year from years 1-20: 2.4% per year
 - b. For each year from years 21-25: 3.0% per year
 - c. For each year 26 and above: 3.4% per year
2. Retirement Age
 - a. The eligible age for an unreduced pension benefit will be age 57
 - b. The eligible age for a reduced pension benefit will be age 50. The reduction for retirement before age 57 will be 7.0% per year, prorated to the closest month.
3. 80% cap
 - a. The maximum pension benefit will be 80% of an employee's final average salary
4. Three-year final average salary
5. A member is vested after 5 years of service
6. No retroactive pension increases or decreases

- a. Any such changes in retirement benefits will only be applied on a prospective basis.
- 7. No pension contribution holiday
- 8. Pensionable pay will include base pay, holiday in lieu pay, EMT pay, anti-terrorism training pay, POST pay, and base FLSA pay as per Tier 1 members.
- 9. Current Tier 2 sworn employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 16a (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 16 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.
- 10. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
- 11. 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 Police and Fire Tier 2 retirement plans, Tier 2 employees will contribute (the "Ramp Up") toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between employee and employer
 - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability
- 12. 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) or 2.0%, whichever is lower
 - b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
13. 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 the greater of:
 - i. 50% of final compensation;
 - ii. A service retirement allowance, if he or she qualified for such;
 - iii. An actuarially reduced factor, as determined by the plan's actuary, for each quarter year that his or her service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not qualified for a service retirement.
 - 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. If less than age 50: 1.8% per year of service; or
 - ii. If older than age 50: The amount of service pension benefit as calculated based upon the service pension formula.
14. 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.
15. Tier 2 members 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 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 80% pension cap versus the current 90% pension cap.
16. "Classic" Lateral will become Tier 1, including former San Jose Fire Department /San Jose Police Department sworn employees
 - a. Former Tier 1 sworn 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
 - b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 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.
 - c. 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.
 - d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2.
17. 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.

18. The City and the Unions agree to work with their actuaries to jointly request that the Police and Fire Retirement Board of Administration and its actuary carefully consider retirement rate actuarial assumptions with regard to the new Tier 2 plan. Specifically, *the parties will request that the Board and its actuary incorporate retirement rate assumptions similar to the CalPERS retirement rates of the similarly designed CalPERS PEPRA plan rather than that of the existing San Jose Police and Fire Tier 1 plan.*

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

1. Close the current defined benefit retiree healthcare program to new employees and current Tier 2 employees
2. 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
3. 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. 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 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.
4. 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.
5. Enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers
6. 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.

7. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
8. The VEBA contribution rate for all new hires and Tier 2 members will be 4.0% of base pay. 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 5.0% of base pay.
9. Members who remain in the Defined Benefit retirement healthcare plan will contribute 8.0% 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 11% of payroll, the City may decide to contribute a maximum of 11%.

10. The parties have been advised that the difference between the defined benefit contribution rate (8.0%) and the VEBA opt-out contribution rate (5.0%) will be taxable income.
11. 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.
12. 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 their prior contributions. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.

13. 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 and 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 sworn employees
- 2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code § 3.36.920 A (4).
- 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 6 of 9 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. Modified Duty (POA – Article 39)

- a. The City and the POA will continue to discuss the modified duty positions during collective bargaining
- b. While these discussions take place, the number of modified duty positions will be increased to 30
- c. The independent medical review panel will evaluate the status of the employees in the modified duty program on a yearly basis until the program is modified through bargaining

9. Worker's Compensation Reform

- a. For Tier 2 participants, the workers' compensation offset currently in place for Federated Plan participants will apply to a maximum aggregate total of \$10,000.00 per Tier 2 employee in workers'

compensation cash disability benefit awards only using the same pension benefit offset formula.

- b. In an effort to streamline the workers' compensation process, reduce costs, decrease the number of work related injuries through prevention and expedite the return to work of those injured or ill, the parties agree to convene a Public Safety Wellness Improvement Committee to discuss modifications to, or creation of, wellness and/or workers' compensation policies, procedures and protocols.

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR
 - a. The funds credited to the SRBR will continue to be credited to the Police and Fire Department Retirement Plan 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 55.
- e. In the event of litigation by a retired member or members of POA and/or IAFF Local 230 challenging this provision of the Settlement Agreement against POA and/or IAFF Local 230, 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 POA and/or IAFF Local 230 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.

Memoranda of Agreement (MOA)

1. This agreement is contingent upon reaching a successor MOA agreement with the POA.

Attorney's Fees

1. \$1.5 million within 30 days of settlement framework being approved by Council in open session
2. The parties agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B
3. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
4. The City shall pay the arbitrator's fees and costs, including court reporter
5. The parties agree that the issue presented shall be: 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?

Implementation Timeline

1. Each party will receive approval of this settlement framework from their respective principals (for the City, this means the City Council; for the Unions, this means their respective Boards of Directors) by August 4th, 2015.

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 SJFF Local 230 or SJPOA. If this agreement is implemented through the quo warranto process, the parties agree to discuss provisions for voter approval of benefits and actuarial soundness for consideration of a 2016 ballot measure to put those provisions into the City Charter.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

July 15, 2015- 9:00PM

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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

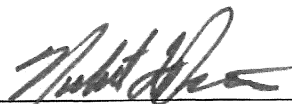
The parties agree to the terms of the attached ballot measure, entitled the "Alternative Pension Reform Act" (hereafter, "Act"), for consideration by City Council to be placed before the voters of the City of San Jose on the November 2016 ballot.

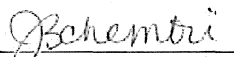
The parties agree that they have met and conferred in good faith, and that this agreement fulfills the City's Seal Beach bargaining obligations related to the Act.

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 Dueñas
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

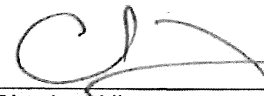
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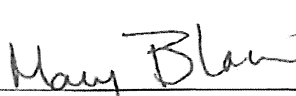
For the Unions:

 8/2/16

Gregg Adam Date
Legal Counsel, POA

 7-26-16

Charles Allen Date
AFSCME Local 101

 7/22/16

Mary Blanco Date
OE#3

 7-22-16

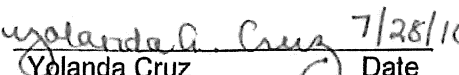
Kara Capaldo Date
President, CAMP

 7-22-16

Steve Contreras Date
President, AMSP

 7-22-16

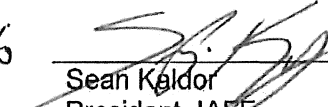
Frank Crusco Date
Chief Steward, IBEW

 7/28/16

Yolanda Cruz Date
President, MEF

 7/21/16

Peter Fenerin Date
President, ABMEI

 7/21/16

Sean Keldor Date
President, IAFP

 7/21/16

Paul Kelly Date
President, POA



Steve Pagan Date
AEA

 7/28/16

Christopher Platten Date
Legal Counsel

 7-27-16

Tom Saggau Date
Labor Consultant

 7/22/16

Sean Stalbaum Date
IFPTE Local 21

 7/22/2016

Vera Todorov Date
ALP

 7/27/16

Sal Ventura Date
IBEW

 7/26/16

LaVerne Washington Date
President, CEO

 7/26/16

James Gonzales Date
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 SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)
THE SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230 (IAFF)

Alternative Pension Reform Settlement Framework (Amended Terms)

Background

On or about July 2015, the City of San Jose (City) and the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, IAFF Local 230 (IAFF) reached agreement on the Alternative Pension Reform Settlement Framework (Framework). As the City has moved to implement the terms of the Framework, the City, the POA, and IAFF have updated certain terms of the Framework. This Side Letter Agreement is to memorialize the amended terms that the City, the POA, and IAFF have agreed upon and which shall be incorporated into the San Jose Municipal Code.

Amended Framework Terms

The parties hereby agree to the following amendments to the terms of the Framework:

Framework		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	9(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 16 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."
Tier 2 Retirement Benefits	16(a)	"Former Tier 1 sworn 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."

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

September 12, 2017

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Framework		Amended Terms
Issue	Section	
Retiree Healthcare	3	"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. b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan c. 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 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. <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> e. <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>
Retiree Healthcare	5	"Enrollment in Medicare Parts A and B as required by any applicable regulations or by insurance providers." The parties agree that eligible members be required to enroll in Medicare Parts A and B by July 1, 2018.
Retiree Healthcare	6	"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."
Framework		Amended Terms
Issue	Section	
Retiree Healthcare	8	"The VEBA contribution rate for all new hires and Tier 2 members will be 4.0% of base pay. 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 <u>4.05.0%</u> of base pay." It is the parties' understanding that the agreement to reduce the VEBA contribution rate for those who opt out of the defined benefit retiree healthcare plan will not have a tax consequence on those Tier 1 members

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

September 12, 2017

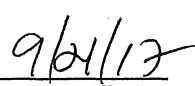
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		who choose to remain in the defined benefit retiree healthcare plan.
Retiree Healthcare		Regarding the VEBA Advisory Committee, the number of members on the committee, qualifications, selection process and term of office shall be established by a negotiated agreement among between the City and all labor groups participating in the plan, including unrepresented members. The requirement that an agreement shall be reached by June 1, 2017, shall be removed.
Disability Definition And Process	6(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 iiii. No experience providing the City or retirement boards with medical services, except for prior service on medical panel iv. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator vi. Varying medical experience"
Supplement Retiree Benefit Reserve (SRBR)	2(b)	"Beginning January 20182016 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." "The supplemental GPP payment to qualifying retirees will be paid annually, in a separate check beginning February 20168, and each February thereafter. <u>The GPP will be included as a line item on the February pension check.</u>"

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:

 Jennifer Schembri Date
 Director of Employee Relations

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

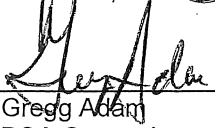
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FOR THE POA:

 9/14/17

Paul Kelly Date
President, POA

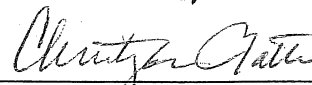
 9/14/17

Gregg Adam Date
POA Counsel

FOR IAFF:

 9/14/17

Sean Kaldor Date
President, IAFF

 9/20/17

Christopher Platten Date
IAFF Counsel