COUNCIL AGENDA: 11/07/17
ITEM: 3.4
FILE: 17-293

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: October 27, 2017

SUBJECT: APPROVAL OF THE TERMS OF THE SETTLEMENT AGREEMENT CONCERNING THE LITIGATION ARISING OUT OF MEASURE B WITH THE SAN JOSE RETIRED EMPLOYEES' ASSOCIATION (SJREA) AND RELATED APPROPRIATION ACTIONS

RECOMMENDATION

It is recommended that the City Council approve the following actions:

(a) Adopt a resolution to approve the terms of the Settlement Agreement ("Agreement") between the City and the San Jose Retired Employees' Association ('SJREA") and the four (4) individual plaintiffs who were parties to the case regarding 2012 Measure B and retiree healthcare matters; and

(b) Adopt the following 2017-2018 Appropriation Ordinance amendments in the General Fund:

(1) Establish a City-Wide Expenses Measure B Settlement appropriation to the City Manager's Office in the amount of $1,750,000; and

(2) Decrease the Retiree Healthcare Solutions Reserve in the amount of $1,750,000.

OUTCOME

Approval of the terms of the Litigation Settlement Agreement (or "Agreement") between the City and the San Jose Retired Employees' Association (SJREA) will settle the litigation surrounding the 2012 pension reform ballot measure known as "Measure B."

BACKGROUND

The City of San José is currently involved in litigation over the June 2012 pension reform ballot measure known as "Measure B," which was approved by the voters on June 5, 2012. Measure B has subsequently been the subject of various forms of litigation.

The litigants included the San Jose Retired Employees' Association (SJREA), which is comprised of certain retirees in the Federated City Employees' Retirement System (Federated Plan), as well as the bargaining units representing employees in the Police and Fire Department Retirement Plan (Police and Fire Plan) and bargaining units representing employees in the Federated Plan.

In addition, in July 2014, the SJREA filed a second lawsuit over the changes the City had previously made to the lowest cost healthcare plan associated with the City's defined benefit retiree healthcare program. Specifically, under the defined retiree healthcare program, the retirement plans pay the full cost of the healthcare premium for retirees eligible for retiree healthcare at the rate of the lowest cost healthcare plan available to active employees, and the SJREA was contesting that they had a vested right to the lowest cost healthcare plan that was in place before December 31, 2012.

Measure B included, among other things, the ability for the City to suspend retiree cost of living adjustments (COLA) in times of emergency as well as the elimination of the Supplemental Retiree Benefit Reserve (SRBR, or the "13th Check"). Various parts of the Superior Court decision are currently on appeal, including the City's appeal of the Superior Court's decision prohibiting the City from suspending the COLA.

In an effort to settle the litigation for the purpose of budget stability and to provide certainty to the City's workforce, the City Council directed the City Administration to make any and all reasonable efforts to reach and implement a settlement. The SJREA is the last plaintiff to settle litigation over Measure B.

Alternative Pension Reform Settlement Frameworks:

In 2015, the City and the San Jose Police Officers' Association (SJPOA) and the San Jose Fire Fighters, IAFF Local 230 (IAFF Local 230) reached a settlement agreement on an Alternative Pension Reform Settlement Framework (Police and Fire Framework) for employees in the Police and Fire Department Retirement Plan which, after ratification by the memberships of the SJPOA and IAFF Local 230, was approved by City Council in open session. In addition, the City and the bargaining units representing Federated employees reached a settlement agreement in 2015 on the Federated Alternative Pension Reform Settlement Framework (Federated Framework), whose terms also applied to unrepresented employees. The Federated Framework, after ratification by the memberships of the Federated bargaining units, was approved by City Council in open session. The Police and Fire Framework and the Federated Framework, or "Frameworks," will settle significant litigation between the City and its employees.

Alternative Pension Reform Act (Measure F):

The Frameworks included an agreement that a ballot measure be placed on the November 8, 2016, election for the voters to replace Measure B by codifying the significant terms of the Frameworks into the City Charter. On August 9, 2016, the City Council placed the Alternative Pension Reform Act, known as Measure F, on the ballot and it was passed by the voters on November 8, 2016.

Retiree Healthcare:

In August 2016, the City and all of its bargaining units reached an agreement that the lowest cost healthcare plan associated with the defined benefit retiree healthcare plan was set so that it would qualify as a "silver" level plan under the Affordable Care Act (ACA). Specifically, the parties agreed that the lowest cost healthcare plan must be estimated to provide at least 70% (or the floor) but no more than 79% (the ceiling) of healthcare expenses (actuarial valuation). This agreement was approved by City Council on October 4, 2016.

San Jose Retired Employees Association (SJREA):

The City and the SJREA have been engaged in litigation settlement discussions since March 25, 2015. Additionally, four individuals were parties to the litigation. As a result of these discussions, the City and the SJREA reached an agreement in principle on the terms of a settlement on November 11, 2016. The SJREA membership approved the Settlement on February 9, 2017, which was signed by the SJREA on October 26, 2017.

ANALYSIS

Approval of the Litigation Settlement Agreement, or "Agreement," between the City and the San Jose Retired Employees' Association will settle all current litigation surrounding Measure B and retiree healthcare.

As mentioned above, the City had previously reached settlement agreements with the bargaining units representing employees in both the Police and Fire Department Retirement Plan as well as the Federated City Employees' Retirement System. These agreements provide for the implementation of agreed upon alternative pension reform that balances the need to provide reasonable and sustainable post-employment benefits while delivering essential city services to the residents of San Jose.

A complete copy of the Litigation Settlement Agreement, or "Agreement," between the City and the SJREA is attached (Attachment A). The following is only a summary of the key provisions of the Agreement.

Supplemental Retiree Benefit	The elimination of the SRBR will continue. Tier 1 retirees will be eligible for the same Guaranteed Purchasing Power

Reserve (SRBR) & Guaranteed Purchasing Power (GPP)	(GPP) as in the Federated Alternative Pension Reform Settlement Framework (Federated Framework). Qualified beneficiaries of eligible Tier 1 employee who retired or died prior to the effective date of the SJREA Settlement Agreement will also qualify for the GPP. As with the Federated Framework, the SRBR will be replaced with the GPP for current and future Tier 1 retirees, but the GPP will be applied prospectively after its implementation. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective the date of the retiree's retirement. The first payment will be made in February 2018.
Supplemental Retiree Benefit Reserve (SRBR) & Guaranteed Purchasing Power (GPP) (cont'd)	A retiree's pension benefit will be recalculated annually to determine if the allowance has kept up with inflation per the CPI-U. The actual benefit will be compared to what would have been required to maintain the same purchasing power at the time of retirement. If the benefit for Tier 1 retirees falls below 75%, a separate check will be issued to make up the difference, beginning in February 2018. It should be noted that, under Measure F, the SRBR was discontinued but, in the event assets are required to be retained in the SRBR, any payments of the SRBR must be approved by the voters.
Defined Benefit Retiree Healthcare	***(a) Lowest Cost Healthcare Plan*** The current Kaiser high deductible plan will continue as the lowest cost healthcare plan until the adoption of the Kaiser NCAL 4307 Plan. The Kaiser 4307 Plan has a $3000 deductible and qualifies for a Health Savings Account (HSA). Currently, the retirement plans pay 100% of the lowest cost plan available to active employees under the defined benefit retiree healthcare program. The lowest cost plan for any current or future eligible retiree in the defined benefit retirement healthcare plan shall be permanently set such that it may not be lower or higher than the "Silver" level as specified by the current Affordable Healthcare Act (ACA) in effect in July 2015. This specifically includes the provision that the healthcare plan must be estimated to provide at least 70% (the "floor") but no more than 79% (the "ceiling") of healthcare expenses as per the current ACA "Silver" definition. ***(b) Medicare and Non-Medicare Plan Providers*** There are numerous Medicare Supplement Plan providers in the current marketplace. The City shall continue to use annual best efforts to procure additional providers, and Council will consider a change to the Municipal Code to allow group proposals from

Defined Benefit Retiree Healthcare (cont'd)	Medicare providers not offering plans to active employees. ***(c) Portability of Healthcare Plans*** Subject to compliance with any relevant rules and regulations, including but not limited to IRS rules and regulations, the City and the SJREA will enter discussions and use good faith efforts with the goal of developing a healthcare portability program; however, this agreement and/or discussions are not to be construed as an agreement to the development of a healthcare portability program. ***(d) Retiree Healthcare In-Lieu Premium Credit*** Similar to the terms contained in the Federated Alternative Pension Reform Settlement Framework (Federated Framework), retirees in the defined benefit retiree healthcare program will have the option to select the retiree healthcare in-lieu premium credit. At the beginning of each plan year, a qualified retiree may choose to forego the defined benefit retiree healthcare plan and instead receive a 25% credit for the monthly premium of the lowest cost healthcare plan and dental plan. This credit may only be used for future City retiree healthcare premiums. Retirees may choose this option at the beginning of the plan year or upon a qualifying event. Retirees must verify dependent enrollment on an annual basis if they are receiving a credit for any tier other than single. If the retiree receives retiree healthcare coverage as a dependent of another City employee or retiree is only eligible for the single in lieu premium credit. Accumulated credits that are never used by the retiree or survivor/beneficiary are forfeited. There is no cap on the amount of credit accumulated, and at no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation. Members in the VEBA are not eligible for this in-lieu benefit. ***(e) Partial Cost Reimbursement for Lower Pension/Pre-Medicare Retirees*** A one-time lump sum payment yet to be determined shall be paid to each retiree (or surviving spouse or domestic partner) who: (1) is earning a pension of $54,000 or less, and

Defined Benefit Retiree Healthcare (cont'd)	(2) who was in a pre-Medicare healthcare plan from January 1, 2013, through December 31, 2016 The lump sum payment shall be for each month an eligible retiree (or surviving spouse or domestic partner), up to a maximum of forty-eight (48) months, was enrolled in a pre-Medicare healthcare plan between January 1, 2013, through December 31, 2016. To receive the lump sum payment, an eligible retiree (or surviving spouse or domestic partner) must execute and submit a release of claims prior to receiving any lump sum payment. The intent of the lump sum is assist those retirees most impacted by the new lowest cost healthcare plan. The total cost of all lump sum payments to be made pursuant to this Agreement shall not exceed $1.25 million. Within ninety (90) days after execution of this Agreement and City Council approval, the City shall identify eligible retirees and the calculation of the monthly reimbursement amount (based on the total number of eligible retirees and qualifying months) and provide this information to SJREA. After identifying eligible retirees, retirees will have one hundred eighty (180) days to submit a release of all claims. The City has ninety (90) days from the deadline to submit payment to retirees.
Defense of Challenge	The SJREA will have a right to tender defense of litigation to the City in the event of a lawsuit by a retired member or members challenging this Agreement. It is important to note the tender of defense will not apply to any lawsuit brought by the SJREA, and the City will have no obligation to defend an individual if the individual litigates the Settlement Agreement with the City.
Attorneys' Fees	To settle attorneys' fees related to Measure B legal matters, the City shall pay to the SJREA $500,000.
Dismissal/ Withdrawal of Appeals	Upon approval by the SJREA and the City Council, both parties agree to take affirmative action to abandon their respective appeals (inclusive of attorney fee appeals) in Case No. 112CV225926, and the SJREA will dismiss its claims in Case No. 114CV268085 with prejudice.

It should be noted that the Agreement between the City and the SJREA does not include the settlement of any potential claims or litigation related to the IRS 415 issue, and the Agreement

does not impair any rights current Federated retirees (or their surviving spouses or domestic partners) may currently have to receive the retiree healthcare as currently implemented.

EVALUATION AND FOLLOW-UP

Approval of the Litigation Settlement Agreement between the City and the San Jose Retired Employees' Association will settle all current litigation surrounding Measure B and retiree healthcare, including the litigation with the four (4) individual plaintiffs to the case.

This is significant because all litigation related to Measure B will now be settled. These agreements provide for the implementation of agreed upon alternative pension reform that balances the need to provide reasonable and sustainable post-employment benefits while delivering essential city services to the residents of San Jose.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the November 7, 2017, City Council Agenda.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

The recommended agreement was not reviewed by a commission.

COST SUMMARY IMPLICATIONS

A new appropriation in the amount of $1.75 million, funded from the Retiree Healthcare Solutions Reserve, is recommended as part of this memorandum to pay attorneys' fees related to the settlement of Measure B ($500,0000), as well as to fund the one-time lump sum payments to be made to eligible lower pension, pre-Medicare retirees ($1.25 million).

The Retiree Healthcare Solutions Reserve was established in 2013 to be used as needed for future retiree healthcare costs.

BUDGET REFERENCE

The table below identifies the fund and appropriation to fund the recommended settlement agreement.

Fund #	Appn #	Appn. Name	Total Appn	Recommended Budget Action	2017-2018 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	8411	Retiree Healthcare Solutions Reserve	$6,070,000	($1,750,000)	945	6/20/17 Ord. 29962
001	3258	Measure B Settlement	$0	$1,750,000	N/A	N/A

CEQA

Not a Project, File No. PP10-069(b), Personnel Related Decisions.

DAVID SYKES
City Manager

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

Attachments:

- Attachment A – Litigation Settlement Agreement between the City and the SJREA

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release of Claims ("Agreement") is made between the City of San Jose ("City") and the San Jose Retired Employees Association ("SJREA"), known collectively as "the Parties."

RECITALS

WHEREAS, on March 6, 2012 the San Jose City Council adopted Resolution No. 76158, which placed "Measure B," a Charter amendment, on the June 5, 2012 ballot.

WHEREAS, on June 5, 2012, the voters approved Measure B.

WHEREAS, after the enactment of Measure B, the SJREA filed the following actions in Santa Clara County Superior Court ("Actions"):

- *San Jose Retired Employees Association v. City of San Jose,* Case No. 1-12-CV-233660, consolidated under Case No. 1-12-CV-225926, Santa Clara County Superior Court.
- *San Jose Retired Employees Association, et al v. City of San Jose,* Case No. 1-14-CV-268085, Santa Clara County Superior Court.

Four individuals, David Armstrong, Donna Jewett, Dorothy McGinley and Kirk W. Pennington (the "Individuals") are also parties to Case No. 1-14-CV-268085.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

1. **Definitions**:

The term "Retiree" or "Retirees" shall include eligible Tier 1 employees (as described in City Charter section 1504-A), who retired prior to the effective date of this Agreement, and their Qualified Beneficiaries, and, in addition, the Qualified Beneficiaries of those Tier 1 employees who died both prior to retirement and prior to the effective date of this Agreement.

The term "Qualified Beneficiaries" shall include "surviving spouses," "surviving domestic partners," "surviving child" and "surviving children" as such terms are defined in the Municipal Code as of the effective date of this Agreement.

2. **COLAs**: Measure B, section 1510-A, entitled "Emergency Measures To Contain Retiree Costs of Living Adjustments," provided for a temporary suspension of cost of living payments ("COLAs") in the event of a fiscal and service level emergency. The City will take affirmative action to abandon its appeal in Case No. 1-12-CV-225926 and shall restore the status quo which existed prior to the 2012 passage of Measure B with respect to COLAs, including the annual COLAs at 3% per year for Retirees.

3. **SRBR/GPP**: Measure B, section 1511-A, eliminated the Supplemental Retiree Benefit Reserve ("SRBR"). The SRBR will continue to be eliminated and the City will replace this benefit with a Guaranteed Purchasing Power (GPP) for Retirees.

Beginning in January 2018, and each January thereafter, a Retiree's pension benefit will be recalculated annually to determine if 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 measured by the CPI-U (San Francisco-Oakland-San Jose), as the Retiree had at the time of retirement or, in the case of a Retiree who became eligible for benefits upon the death of a City employee who died prior to retirement, the time of that City employee's death.

Those 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.

The supplemental GPP payment to qualifying Retirees will be paid annually,

beginning February 2018, and each February thereafter.

Consistent with the definition of the term Retiree and Retirees, set forth in Section 1, the GPP shall be applied only to survivorship benefits of Qualified Beneficiaries of eligible Tier 1 City employees who retired or died prior to retirement, before the effective date of this agreement. The GPP shall not apply to survivorship benefits of Qualified Beneficiaries of Tier 1 City employees who retired, or died prior to retirement, on or after the effective date of this Agreement.

4. **Health Benefits:**

a.) **Lowest Cost Health Plan**: The current Kaiser DHMO 1500 deductible plan will continue as the lowest cost plan ("LCP") until the adoption of the Kaiser 4307 Plan (305/$3,000 HSA-Qualified Deductible HMO Plan) as the LCP (now anticipated in January 2018). For Retirees, the "lowest cost plan" shall be permanently set such that it would qualify for "silver" level as specified by the Affordable Care Act (ACA) in effect in July 2015. This specifically includes the provision that the healthcare plan must be determined to provide at least 70% (the "floor") but no more than 79% (the "ceiling") of healthcare expenses (actuarial valuation) as per the current ACA "silver" definition, a copy of which is attached hereto and incorporated herein by reference. Any additional language included in the relevant Municipal Code section governing the lowest cost plan shall not be in conflict with the above language setting a permanent floor and ceiling.

b.) **Medicare and Non-Medicare Plan Providers**: There are numerous Medicare Supplement Plan providers in the current marketplace. The City shall continue to use annual best efforts to procure additional providers, and Council will consider a change to the Municipal Code to allow group proposals from Medicare providers not offering plans to active City employees.

c.) **Portability and Health Care Premium Credit**: Subject to compliance with any relevant rules and regulations, including but not limited to IRS rules and regulations:

(i) **Medicare and Pre-Medicare** Retirees wish to access up to the LCP amount to be applied towards a private plan if a City negotiated non-LCP available to such Retiree exceeds a mutually agreed upon inflation adjusted base amount (such as the 2016

Blue Shield HMO plan.), including re-entry into the City's healthcare program. The City and SJREA will enter into discussions with the goal of developing a health care portability program ("HCPP"). While both Parties shall use good faith efforts in the development of the HCPP, discussions have not yet begun and this paragraph shall not be construed as an agreement by either party to the development of a final program.

(ii) **Health Care Premium Credit**. Consistent with the terms of Paragraph 5 of the Retiree Healthcare section of the Federated Alternative Pension Reform Agreement, a copy of which is attached and incorporated herein by reference, the current defined benefit retiree healthcare plan is modified to (inter alia) enable Retirees 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 plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage for that plan year. 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.

d.) **Partial cost reimbursement for lower pension pre-Medicare Retirees:** As one-time lump sum payments, each Retiree earning a pension of $54,000 or less shall receive a reimbursement for each month such Retiree was in a pre-Medicare health plan starting January 1, 2013 through December 31, 2016 (up to a maximum of 48 months). The maximum value of the lump sum payments will be $1.25 million (the monthly amount will be calculated so that the total cost to the City is equal to $1.25 million).

(i) The Parties agree that no Retirees will be eligible unless they execute a separate release of all claims related to case Nos. 1-12-CV-225926 and 1-14-CV-268085 as well as all claims related to the Settlement Agreement.

(ii) Within ninety (90) calendar days after approval of this Agreement, the City shall identify the aggregate number of eligible Retirees and the calculation of the monthly reimbursement amount (based on the total number of eligible Retirees and qualifying months) and

provide this information to SJREA. After consultation with SJREA as to the aggregate number of eligible Retirees and the calculation of the monthly reimbursement amount, the City shall send a Release (in the agreed upon form) to each identified eligible Retiree at the address on file with the retirement system, with a return envelope preaddressed to the City. A Retiree who does not meet the mutually agreed to eligibility criteria shall not be eligible for this reimbursement.

(iii) In order to receive reimbursement, a Retiree must mail or otherwise return the signed Release to the City, at the address designated in the Release, within one hundred eighty (180) calendar days of the date of the postmark on the envelope transmitting the Release to the Retiree. The City shall, within ten (10) days of the mailing which triggers the one hundred eighty calendar day deadline, notify SJREA of the date of the mailing. Within ninety (90) calendar days after the receipt of a Retiree's signed Release, the City shall provide a check for payment of the reimbursement amount to that Retiree.

5. **Miscellaneous provisions:**

a.) The Parties agree that this settlement does not include the settlement of any potential claims or litigation related to the Internal Revenue Code Section 415(b) limit or any alleged obligations of the City to provide benefits notwithstanding that limit and that no release contained in this Agreement applies to these claims or matters. Nothing in this agreement is intended to prohibit, allow or require the City to provide retirement benefits in excess of the Section 415(b) limit.

b.) Except as specifically set forth in this Agreement, this Agreement shall not impair any rights Retirees currently have to receive the City's Healthcare programs as currently implemented.

6. **Defense of challenge**: In the event of litigation brought against the SJREA or the Individuals by a Retiree or Retirees challenging the Settlement Agreement, the SJREA and/or the Individuals will have a right to tender the defense of the litigation to the City, except that this provision shall not apply to any lawsuit brought by the SJREA. In addition, the obligation to defend an Individual ceases immediately upon the filing of a lawsuit challenging this Settlement Agreement by that Individual. The

City will accept the defense of the litigation and will defend the SJREA and the Individuals with counsel of City's choice, including the City Attorney's Office. If the City is also a named defendant in any such suit, SJREA and the Individuals will not claim that joint representation of the SJREA and any 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.

7. **Attorneys' fees**: The City will reimburse SJREA for actual out of pocket and Attorney fees and costs in the amount of $500,000. No charge is being made for the time of lawyers who provided extensive services pro-bono. This reimbursement shall constitute full and final agreement on any reimbursement to be made by the City to SJREA or the Individual Plaintiffs regarding fees and costs related to case Nos. 1-12-CV225926 and 1-14-CV268085 and this Agreement. Except as set forth in this paragraph, all Parties shall bear their own attorney's fees, legal expenses and costs.

8. **Dismissal/Withdrawal of Appeal.** Within ten (10) calendar days after receiving a fully executed version of this Agreement, and any required approval by the San Jose City Council, both the City and the SJREA shall file an Abandonment of their respective appeals (inclusive of attorney fee appeals) in case No. 112CV225926 pursuant to California Rules of Court, Rule 8.316, and the SJREA will file a Request for Dismissal of the claims in Case No. 114CV268085 with prejudice, and the Individuals will file a Request for Dismissal of the claims in Case No. 1-14-CV268085 without prejudice. This Agreement shall not be enforceable against the City or SJREA unless a Request for Dismissal without prejudice has been filed on behalf of all the Individuals in Case No. 1-14-CV-268085.

9. **Release:** In exchange for the above actions by the City, and for other good and sufficient consideration, SJREA, for SJREA, and its administrators, assigns and successors, fully and forever releases and discharges the City of San Jose, and the City's constituent departments, commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers, directors, trustees, agents, employees and assigns (collectively "Releasees") from any and all liabilities, claims, demands, contracts, debts, damages, acts or omissions, obligations and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or unknown, which now exists, related to the Actions, Measure B, or Measure F which was approved by San Jose's voters on

November 8, 2016. This release includes, but is not limited to, any and all past, pending or contemplated lawsuits; claims; quo warranto proceedings, and administrative charges; brought by or on behalf of SJREA against any Releasee, related to the Actions, Measure B or Measure F. However, except as specified in Paragraph 4(d) herein, this Agreement shall not act as a waiver of any rights of any Retiree (as defined in Paragraph 1) to make claims or pursue litigation against the City. Similarly, this Agreement is not a waiver of any defenses the City may have against any litigation which is not part of this settlement.

10. SJREA understands and expressly agrees that the release contained in Paragraph 9 extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past or present, related to the Actions, Measure B, or Measure F, and that, with respect to the Actions, Measure B, or Measure F, any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

11. This Agreement is a compromise settlement of disputed claims. Nothing contained in this Agreement and no act taken pursuant to it, will constitute an admission by the Parties of any wrongdoing, liability or fault by the Parties in relation to the matters alleged in the Actions.

12. SJREA represents that either (a) there are no existing liens or partial liens in existence, including without limitation for any attorney's fees, costs of litigation, or other costs attached to the Actions, nor is any person or entity entitled to establish a lien as a consequence of any of the matters relating to the Actions, or (b) to the extent there are any such liens, SJREA will pay and retire all such liens. SJREA agrees to defend, indemnify and hold harmless the City against any and all claims by any person or entity purporting to hold any lien, interest, or other claim, attorney's fees, litigation costs, or otherwise, in any way arising from, connected with or related to the Actions.

13. The Parties acknowledge that this Agreement constitutes the complete Agreement between the Parties and supersedes any prior written or oral agreements.

The Parties acknowledge that this Agreement may be modified only by a writing signed by all Parties to this Agreement.

14. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California. The Parties agree that the Santa Clara County Superior Court will have jurisdiction to enforce this Agreement. All disputes arising out of this Agreement shall be resolved by the Santa Clara County Superior Court.

15. The Parties acknowledge that each has read and understands this Agreement and agrees to its terms and signs this Agreement voluntarily and without coercion. SJREA further acknowledges that the release as set forth in Paragraph 9 is knowing, conscious and with full appreciation that SJREA is forever foreclosed from pursuing any of the rights or claims so released.

16. The Parties acknowledge that each has had the opportunity to consult with counsel prior to executing this document.

17. This Agreement has been reviewed by the Parties and their respective attorneys, and each has had full opportunity to negotiate the contents of this Agreement. The Parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning.

18. The Parties agree to all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

19. This Agreement may be signed in multiple counterparts, each of which shall have the same effect as the originals, but all such counterparts collectively shall constitute the same instrument. The effective date of this Agreement shall be when it has been signed by all parties below and the Individuals have filed a Request for Dismissal of the claims in Case No. 1-14-CV268085 without prejudice.

CITY OF SAN JOSE

Dated: _____

Richard Doyle
City Attorney
City of San Jose

APPROVED AS TO FORM:

RENNE SLOAN HOLTZMAN SAKAI LLP

Dated: _____

Linda M. Ross
Attorneys for City of San Jose

SAN JOSE RETIRED EMPLOYEES ASSOCIATION

Dated: 10/26/17

Bob Leininger
Bob Leininger
President
San Jose Retired Employees Association

APPROVED AS TO FORM:

RAINS LUCIA STERN ST. PHALLE & SILVER, PC

Dated: 10/26/17

Jacob A. Kalinski
Attorneys for San Jose Retired Employees Association

EXHIBIT A

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 157. Quality Affordable Health Care for All Americans
Subchapter III. Available Coverage Choices for All Americans
Part A. Establishment of Qualified Health Plans

42 U.S.C.A. § 18022

§ 18022. Essential health benefits requirements

Currentness

(a) Essential health benefits package

In this title, the term "essential health benefits package" means, with respect to any health plan, coverage that--

(1) provides for the essential health benefits defined by the Secretary under subsection (b);

(2) limits cost-sharing for such coverage in accordance with subsection (c); and

(3) subject to subsection (e), provides either the bronze, silver, gold, or platinum level of coverage described in subsection (d).

(b) Essential health benefits

(1) In general

Subject to paragraph (2), the Secretary shall define the essential health benefits, except that such benefits shall include at least the following general categories and the items and services covered within the categories:

(A) Ambulatory patient services.

(B) Emergency services.

(C) Hospitalization.

(D) Maternity and newborn care.

(E) Mental health and substance use disorder services, including behavioral health treatment.

(F) Prescription drugs.

(G) Rehabilitative and habilitative services and devices.

(H) Laboratory services.

(I) Preventive and wellness services and chronic disease management.

(J) Pediatric services, including oral and vision care.

(2) Limitation

(A) In general

The Secretary shall ensure that the scope of the essential health benefits under paragraph (1) is equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary. To inform this determination, the Secretary of Labor shall conduct a survey of employer-sponsored coverage to determine the benefits typically covered by employers, including multiemployer plans, and provide a report on such survey to the Secretary.

(B) Certification

In defining the essential health benefits described in paragraph (1), and in revising the benefits under paragraph (4)(H), the Secretary shall submit a report to the appropriate committees of Congress containing a certification from the Chief Actuary of the Centers for Medicare & Medicaid Services that such essential health benefits meet the limitation described in paragraph (2).

(3) Notice and hearing

In defining the essential health benefits described in paragraph (1), and in revising the benefits under paragraph (4)(H), the Secretary shall provide notice and an opportunity for public comment.

(4) Required elements for consideration

In defining the essential health benefits under paragraph (1), the Secretary shall--

(A) ensure that such essential health benefits reflect an appropriate balance among the categories described in such subsection, [1] so that benefits are not unduly weighted toward any category;

(B) not make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life;

(C) take into account the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups;

(D) ensure that health benefits established as essential not be subject to denial to individuals against their wishes on the basis of the individuals' age or expected length of life or of the individuals' present or predicted disability, degree of medical dependency, or quality of life;

(E) provide that a qualified health plan shall not be treated as providing coverage for the essential health benefits described in paragraph (1) unless the plan provides that--

(i) coverage for emergency department services will be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan for the providing of services that is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and

(ii) if such services are provided out-of-network, the cost-sharing requirement (expressed as a copayment amount or coinsurance rate) is the same requirement that would apply if such services were provided in-network;

(F) provide that if a plan described in section 18031(b)(2)(B)(ii)[2] of this title (relating to stand-alone dental benefits plans) is offered through an Exchange, another health plan offered through such Exchange shall not fail to be treated as a qualified health plan solely because the plan does not offer coverage of benefits offered through the stand-alone plan that are otherwise required under paragraph (1)(J); and[3]

(G) periodically review the essential health benefits under paragraph (1), and provide a report to Congress and the public that contains--

(i) an assessment of whether enrollees are facing any difficulty accessing needed services for reasons of coverage or cost;

(ii) an assessment of whether the essential health benefits needs to be modified or updated to account for changes in medical evidence or scientific advancement;

(iii) information on how the essential health benefits will be modified to address any such gaps in access or changes in the evidence base;

(iv) an assessment of the potential of additional or expanded benefits to increase costs and the interactions between the addition or expansion of benefits and reductions in existing benefits to meet actuarial limitations described in paragraph (2); and

(H) periodically update the essential health benefits under paragraph (1) to address any gaps in access to coverage or changes in the evidence base the Secretary identifies in the review conducted under subparagraph (G).

(5) Rule of construction

Nothing in this title shall be construed to prohibit a health plan from providing benefits in excess of the essential health benefits described in this subsection.

(c) Requirements relating to cost-sharing

(1) Annual limitation on cost-sharing

(A) 2014

The cost-sharing incurred under a health plan with respect to self-only coverage or coverage other than self-only coverage for a plan year beginning in 2014 shall not exceed the dollar amounts in effect under section 223(c)(2)(A)(ii) of Title 26 for self-only and family coverage, respectively, for taxable years beginning in 2014.

(B) 2015 and later

In the case of any plan year beginning in a calendar year after 2014, the limitation under this paragraph shall--

(i) in the case of self-only coverage, be equal to the dollar amount under subparagraph (A) for self-only coverage for plan years beginning in 2014, increased by an amount equal to the product of that amount and the premium adjustment percentage under paragraph (4) for the calendar year; and

(ii) in the case of other coverage, twice the amount in effect under clause (i).

If the amount of any increase under clause (i) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(2) Repealed. Pub.L. 113-93, Title II, § 213(a)(1), Apr. 1, 2014, 128 Stat. 1047

(3) Cost-sharing

In this title--

(A) In general

The term "cost-sharing" includes--

(i) deductibles, coinsurance, copayments, or similar charges; and

(ii) any other expenditure required of an insured individual which is a qualified medical expense (within the meaning of section 223(d)(2) of Title 26) with respect to essential health benefits covered under the plan.

(B) Exceptions

Such term does not include premiums, balance billing amounts for non-network providers, or spending for non-covered services.

(4) Premium adjustment percentage

For purposes of paragraph (1)(B)(i), the premium adjustment percentage for any calendar year is the percentage (if any) by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year (as estimated by the Secretary no later than October 1 of such preceding calendar year) exceeds such average per capita premium for 2013 (as determined by the Secretary).

(d) Levels of coverage

(1) Levels of coverage defined

The levels of coverage described in this subsection are as follows:

(A) Bronze level

A plan in the bronze level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

(B) Silver level

A plan in the silver level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan.

(C) Gold level

A plan in the gold level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 80 percent of the full actuarial value of the benefits provided under the plan.

(D) Platinum level

A plan in the platinum level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 90 percent of the full actuarial value of the benefits provided under the plan.

(2) Actuarial value

(A) In general

Under regulations issued by the Secretary, the level of coverage of a plan shall be determined on the basis that the essential health benefits described in subsection (b) shall be provided to a standard population (and without regard to the population the plan may actually provide benefits to).

(B) Employer contributions

The Secretary shall issue regulations under which employer contributions to a health savings account (within the meaning of section 223 of Title 26) may be taken into account in determining the level of coverage for a plan of the employer.

(C) Application

In determining under this title, the Public Health Service Act [42 U.S.C. 201 et seq.], or Title 26 the percentage of the total allowed costs of benefits provided under a group health plan or health insurance coverage that are provided by such plan or coverage, the rules contained in the regulations under this paragraph shall apply.

(3) Allowable variance

The Secretary shall develop guidelines to provide for a de minimis variation in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates.

(4) Plan reference

In this title, any reference to a bronze, silver, gold, or platinum plan shall be treated as a reference to a qualified health plan providing a bronze, silver, gold, or platinum level of coverage, as the case may be.

(e) Catastrophic plan

(1) In general

A health plan not providing a bronze, silver, gold, or platinum level of coverage shall be treated as meeting the requirements of subsection (d) with respect to any plan year if--

(A) the only individuals who are eligible to enroll in the plan are individuals described in paragraph (2); and

(B) the plan provides--

(i) except as provided in clause (ii), the essential health benefits determined under subsection (b), except that the plan provides no benefits for any plan year until the individual has incurred cost-sharing expenses in an amount equal to the annual limitation in effect under subsection (c)(1) for the plan year (except as provided for in section 2713); and

(ii) coverage for at least three primary care visits.

(2) Individuals eligible for enrollment

An individual is described in this paragraph for any plan year if the individual--

(A) has not attained the age of 30 before the beginning of the plan year; or

(B) has a certification in effect for any plan year under this title that the individual is exempt from the requirement under section 5000A of Title 26 by reason of--

(i) section 5000A(e)(1) of such title (relating to individuals without affordable coverage); or

(ii) section 5000A(e)(5) of such title (relating to individuals with hardships).

(3) Restriction to individual market

If a health insurance issuer offers a health plan described in this subsection, the issuer may only offer the plan in the individual market.

(f) Child-only plans

If a qualified health plan is offered through the Exchange in any level of coverage specified under subsection (d), the issuer shall also offer that plan through the Exchange in that level as a plan in which the only enrollees are individuals who, as of the beginning of a plan year, have not attained the age of 21, and such plan shall be treated as a qualified health plan.

(g) Payments to Federally-qualified health centers

If any item or service covered by a qualified health plan is provided by a Federally-qualified health center (as defined in section 1396d(l)(2)(B) of this title) to an enrollee of the plan, the offeror of the plan shall pay to the center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1396a(bb) of this title for such item or service.

CREDIT(S)

(Pub.L. 111-148, Title I, § 1302, Title X, § 10104(b), Mar. 23, 2010, 124 Stat. 163, 896; Pub.L. 113-93, Title II, § 213(a), Apr. 1, 2014, 128 Stat. 1047.)

Footnotes

1 So in original. Probably should be "paragraph,".

2 So in original. Probably should be "18031(d)(2)(B)(ii)".

3 So in original. The word "and" probably should not appear.

42 U.S.C.A. § 18022, 42 USCA § 18022

Current through P.L. 115-61. Title 26 current through P.L. 115-64.

End of Document

EXHIBIT B

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% x Years of Service x 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% x Years of Service x 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 PEPRA, 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 PEPRA 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 65th 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: • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement

		• 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 • Non-precedential for any purpose
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	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). Outline of stipulated facts and findings: • history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation; • changes to the proposed ballot language, including post-impasse changes; • tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations – as described on pages 3-4 of Attorney General opinion No. 12-605. • 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. MMBA issue); • 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; • the desirability of finding a solution that is collaborative. • financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable; • Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA 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.

		• 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. • Agreement that Resolution No. 76158 shall be null and void. • 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
7.	Upon completion of #5 and #6	• Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
8.	Upon entry of judgment in quo warranto case	• Formally adopt ordinances to implement Settlement Framework and replace Measure B. • 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.
9.	January 2016	• 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
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

11/23/15

11/23/15

11/23/15

MB 11/23/15

11/23/15

11/23/15

11/23/15

11-23-15

Marco Mercado for JS 11/23/15

11/23/15

11/23/15