



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: August 16, 2018

Approved

Date 8/17/18

**SUBJECT: ORDINANCE ALLOWING THE EMPLOYEE REPAYMENT OF TIER 1
REHIRE AMORTIZATION COSTS**

RECOMMENDATION

- a) Adopt a resolution to approve the terms of a Side Letter Agreement related to the Tier 1 Amortization Costs between the City of San Jose and its' eleven bargaining units.
- b) Approve an ordinance to amend various sections of Chapter 3.28 and Chapter 3.36 of Title 3, of the San José Municipal Code to clarify certain provisions of the Alternative Pension Reform Settlement Framework Agreement with the City's employee bargaining units.

OUTCOME

Adoption of a resolution approving the terms of a Side Letter Agreement and the adoption of an ordinance amending San José Municipal Code Sections 3.28.030.28, 3.28.200, 3.36.020.15, and 3.36.410 and adding sections 3.28.700 and 3.36.720 will provide for the repayment of the amortization costs associated with the transition of a Rehired Tier 1 employee from Tier 2 into Tier 1 .

BACKGROUND

The City and the eleven bargaining units have clarified the terms of the Alternative Pension Reform Frameworks, including the process for the payment of the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization). The City and the bargaining units have agreed to the amended terms regarding the Tier 1 Rehire amortization in two side letter agreements (See Attachment A and B).

August 16, 2018

Subject: Ordinance Allowing the Employee Repayment of Tier 1 Rehire Amortization Costs

Page 2 of 3

ANALYSIS

The parties agreed in the attached side letters that for Rehired Tier 1 Employees, any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were rehired former Tier 1 City employees will be amortized over different individual amortization periods as determined by the Board's actuary. The amount of time will be dependent on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1 and split between the employee and the City on a 50/50 basis.

Rehired Tier 1 Employees are individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and will sign individual agreements confirming his or her obligations. They will pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee. The employees will pay this additional contribution rate on different individual amortization periods, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1.

If a rehired Tier 1 employee leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability, the employee is required to pay any remaining balance upon leaving City service. The remaining balance may be paid through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.

The portion of unfunded liability that the City is responsible for as result of this transition was calculated into the total unfunded liability for the 2018-2019 year.

Pursuant to these side letter agreements, the City is bringing forward an amendment to the San Jose Municipal Code. The City drafted an ordinance that, if adopted by Council, would amend the Municipal Code to provide for the repayment of these amortization costs as outlined in the attached side letters.

The City provided the draft ordinance to the Police and Fire Department Retirement Plan and Federated City Employees' Retirement System Boards of Administration for their meetings in August. Both Boards directed their Counsel to provide any comments or questions to the City for consideration. If the Board's counsel has any follow-up, the City will communicate those comments to the Council for their review.

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 September 11, 2018 and become effective 30 days later.

HONORABLE MAYOR AND CITY COUNCIL

August 16, 2018

Subject: Ordinance Allowing the Employee Repayment of Tier 1 Rehire Amortization Costs

Page 3 of 3

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the August 28, 2018 City Council Agenda.

COORDINATION

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

COMMISSION RECOMMENDATION AND INPUT

The Federated Retirement System Board and the Police and Fire Retirement Plan Board reviewed the Municipal Code changes, as noted above.

COST SUMMARY/IMPLICATIONS

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

CEQA

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



JENNIFER SCHEMBRI

Director of Employee Relations

Acting Director of Human Resources

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

Attachments

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

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

Federated Alternative Pension Reform Settlement Framework (Tier 1 Rehire Amortization)

Background

On or about November/December 2015, the City of San Jose (City) and ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3 (collectively, Federated Bargaining Units) reached agreement on the Federated Alternative Pension Reform Settlement Framework (Federated Framework). As the City has moved to implement the terms of the Federated Framework, the City and the Federated Bargaining Units have updated certain terms of the Framework, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City and the Federated Bargaining Units have agreed upon and which shall be incorporated into the San Jose Municipal Code.

Amended Framework Terms (Tier 1 Rehire Amortization)

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:

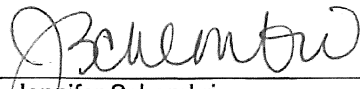
| Federated Framework | | Amended Terms |
|----------------------------|---------|--|
| Issue | Section | |
| Tier 2 Retirement Benefits | 18 | "18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement 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 |

| | | |
|--|--|---|
| | | <p>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. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p>(i) <u>Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p>(ii) <u>Rehired Tier 1 Employees shall:</u></p> <p>(1) <u>Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p>(2) <u>Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was a Tier 2 member.</u></p> <p>(iii) <u>A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.</p> <p>c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2."</p> |
|--|--|---|


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.

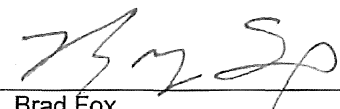
This Side Letter Agreement shall be effective when signed by all parties below.

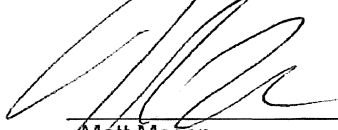
FOR THE CITY:

 6/20/18
Date
Jennifer Schembri
Director of Employee Relations


FOR THE UNIONS:

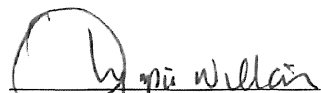
 6/4/18
Date
Peter Fenerin
President, ABMEI

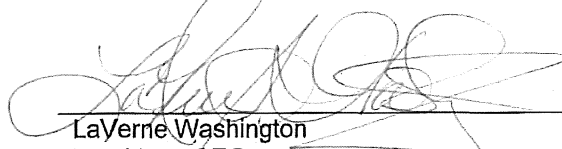
 5/30/18
Date
Brad Fox
President, AEA

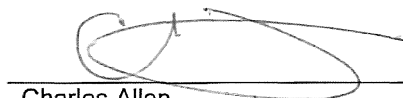
 5/29/2018
Date
Matt Mason
Business Representative, IFPTE

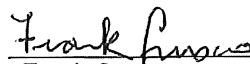
 6/6/18
Date
Terra Chaffee
President, ALP

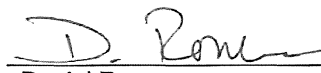
 6/21/18
Date
Steve Contreras
President, AMSP


 5/31/18
Date
Olympia Williams
IFPTE Representative, CAMP

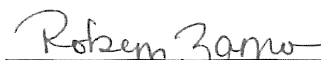

Date
LaVerne Washington
President, CEO

 6-1-18
Date
Charles Allen
Business Representative, AFSCME

 5-29-2018
Date
Frank Crusco
Chief Steward, IBEW

 6-4-18
Date
Daniel Romero
Business Representative, IBEW

 6/4/18
Date
Mary Blanco
Business Representative, OE#3

 6/4/18
Date
Robyn Zamora
President, MEF

 6/14/18
Date
Christopher Platten
Legal Counsel

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 (Tier 1 Rehire Amortization)

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, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City, the POA, and IAFF have agreed upon and which shall be incorporated into the San Jose Municipal Code.

Amended Framework Terms (Tier 1 Rehire Amortization)

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:

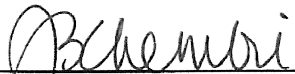
| Framework | | Amended Terms |
|----------------------------|----------------|--|
| Issue | Section | |
| Tier 2 Retirement Benefits | 16 | <p>"a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1</p> <p>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</p> |

| | | |
|--|--|---|
| | | <p>unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p>(i) <u>Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p>(ii) <u>Rehired Tier 1 Employees shall:</u></p> <p>(1) <u>Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p>(2) <u>Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was in Tier 2 member.</u></p> <p>(iii) <u>A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>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.</p> <p>d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2."</p> |
|--|--|---|

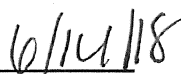
The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.

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

FOR THE CITY:

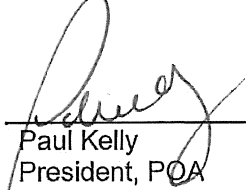


Jennifer Schembri
Director of Employee Relations

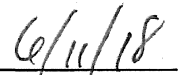


Date

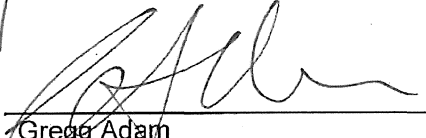
FOR THE POA:



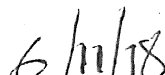
Paul Kelly
President, POA



Date




Gregg Adam
POA Counsel

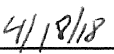


Date

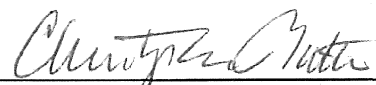
FOR IAFF:



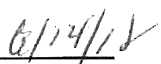
Sean Kaldor
President, IAFF



Date



Christopher Platten
IAFF Counsel



Date