

1 CHARLES D. SAKAI (SBN 173726)
csakai@publiclawgroup.com
2 RENNE SLOAN HOLTZMAN SAKAI LLP
1220 Seventh Street, Suite 300
3 Berkeley, California 94710
Telephone: (510) 995-5800
4 Facsimile: (415) 678-3838

5 Attorneys for Defendant
CITY OF SAN JOSE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANTA CLARA

10 THE PEOPLE OF THE STATE OF CALIFORNIA
on the RELATION of SAN JOSE POLICE
11 OFFICERS' ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSE, and CITY COUNCIL OF
SAN JOSE,

15 Defendants.

Case No. 113-cv-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

**DECLARATION OF NORBERTO DUENAS
IN SUPPORT OF OPPOSITION TO
APPLICATION TO INTERVENE**

Date: April 5, 2016
Time: 9:00 a.m.
Dept: 7
Judge: Hon. Beth McGowen

17 I, NORBERTO DUENAS, declare as follows,

18 1. I make this declaration of my own knowledge, and if called upon to testify, could
19 competently testify to the facts herein.

20 2. I am the City Manager for the City of San Jose (hereinafter, "City"). I was appointed
21 City Manager on May 5, 2015, after serving as Interim City Manager since December of 2014. I began
22 working in the City Manager's Office as a Deputy City Manager beginning in 2008.

23 3. I have worked for the City for approximately thirty (30) years in a variety of positions and
24 for a variety of Departments. I believe that my long tenure with the City gives me a strong perspective
25 on the importance of resolving the litigation around Measure B, which I see as of crucial importance to
26 the City and its residents.

27 4. Almost since my appointment as Interim City Manager, the City has been focused on
28 negotiating a settlement to the retirement reform litigation. Because of the importance of this issue, I

1 became personally involved in the negotiations with all of the City's employee groups, including the San
2 Jose Police Officers' Association ("POA").

3 **Retirement Reform Negotiations**

4 5. The City has a policy of transparency in labor negotiations, and has made significant
5 efforts to provide an unprecedented amount of labor relations information to the public. While the same
6 level of transparency does not normally apply to the negotiations to end litigation, the City made every
7 effort to provide the public with information about the negotiations to end the retirement reform
8 litigation.

9 6. The City established a website to make information related to retirement reform
10 negotiations available to the public. The website included links to two City Council presentations, on
11 January 20, 2015, and March 16, 2015 as well as the full text of the Alternate Pension Reform
12 Frameworks with the public safety and miscellaneous bargaining units. The website is available here:
13 <https://www.sanjoseca.gov/index.aspx?NID=4657>

14 7. In addition, the City Council held public meetings to adopt the Alternate Pension Reform
15 Frameworks that became the basis for the City's settlements of the litigation on August 11 and August
16 25, 2015 for Police and Fire and December 15, 2015 for the Federated bargaining units. Lengthy Staff
17 Reports were made publicly available prior to these hearings. (Exhibits 1, 2, and 3)

18 8. The settlement of the retirement reform litigation was heavily publicized and was the
19 subject of a number of articles in the local and statewide media.

20 9. As part of the settlement negotiations, the parties have reached agreement on language for
21 a ballot measure with POA and San Jose Firefighters Association, IAFF Local 230 and have agreed to
22 basic deal points on ballot language with the remaining nine (9) labor organizations. The ballot language
23 agreed to with the POA includes specific voter authorization of the Tier 2 benefits negotiated under the
24 framework. (Exhibit 4)

25 **Defense of Measure B**

26 10. The Interveners suggest that the City has failed to properly defend Measure B. That is
27 simply not the case. Beginning prior to the June 2012 election, numerous groups filed challenges to
28 Measure B, based on a variety of theories. While some of these have been dismissed, most are either

1 currently active or are on appeal.

2 11. The Alternate Pension Reform Settlement Frameworks the City has achieved would
3 include the settlement of the following matters:

- 4 • International Association of Fire Fighters Local 230 v. City of San Jose, Case No.: 1-12-CV-
5 236847 [retiree health care];
- 6 • San Jose Police Officers' Association v. City of San Jose, Board of Administration for Fire
7 and Police Department Plan for City of San Jose and Does 1-10 Inclusive, Case No.: 1-12-
8 CV-225926 [on appeal in Case No.: H042074, consolidated with Cases Nos. 1-12-CV-
9 225928, 1-12-CV-2667864 and 1-12-CV-233660];
- 10 • International Association of Fire Fighters Local 230 v. City of San Jose, Public Employment
11 Relations Board Case No.: SF-CE-969M [unfair practice charge];
- 12 • American Federation of State, County and Municipal Employees v. City of San Jose, Case
13 No. 2012-1-12-CV-227864 [writ of mandate];
- 14 • T. Harris, et. al. v. City of San Jose et. al., Case No. 2012-1-12-CV-226570;
- 15 • J. Mukhar, et. al. v. City of San Jose et. al., Case No. 2012-1-12-CV-226574;
- 16 • Operating Engineers Local 3 v. City of San Jose, Public Employment Relations Board Case
17 No. SF-CE-900M [unfair practice charge];
- 18 • American Federation of State, County and Municipal Employees v. City of San Jose, Public
19 Employment Relations Board Case No. SF-CE-924M [unfair practice charge]; and
- 20 • International Federation of Profession and Technical Engineers v. City of San Jose, Public
21 Employment Relations Board Case No. SF-CE-996M [unfair practice charge].

22 12. The City has spent millions of dollars defending these challenges. If the settlement
23 framework is set aside, the litigation would continue and present additional costs to the City.

24 **Impacts of Delay**

25 13. Measure B, though well-intended, had negative consequences for the City, including
26 significant impacts on the recruitment and retention of police officers. Since 2012, the City has had
27 issues with the recruitment and retention of police officers, culminating in the mandatory staffing plan
28 rolled out by Chief Garcia last week. The settlement framework negotiated by the parties in July is a key

1 component to the City's attempt to stabilize hiring and retention in the Police Department and delays in
2 its implementation will jeopardize our ability to recruit and retain police officers.

3 14. The Alternate Pension Reform Settlement Framework also includes the placement of a
4 new measure on the November 2016 ballot to confirm specific aspects of retirement reform. The City
5 has reached a tentative agreement with POA and Local 230 of the International Association of
6 Firefighters over the terms of that ballot measure and is working with its non-sworn groups to complete
7 the bargaining over the new ballot measure.

8 15. If the interveners are allowed to prevent implementation of the Alternate Pension Reform
9 Settlement Framework and the ballot measure, the parties will have to begin negotiations over a new
10 ballot measure to supersede Measure B in its entirety. In 2012, the parties spent more than eight (8)
11 months negotiating over Measure B, and still failed to reach agreement. The City Council would have to
12 act in August to place a measure on the November 2016 ballot, giving the parties only a few months to
13 negotiate a new measure. If the parties fail to reach agreement before then, the Council would have to
14 wait until 2018 for a replacement measure.

15 16. The Alternate Pension Reform Settlement Framework is estimated to create savings of
16 \$3.0 Billion city-wide over thirty (30) years. At this point, all City Unions have agreed to these changes.
17 Continued litigation would place all of that savings at risk.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed on this 23 day of March 2016.

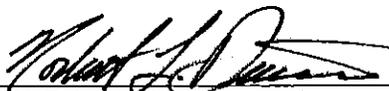
20
21 
22 NORBERTO DUENAS

EXHIBIT 1



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: July 24, 2015

Approved

Date

7/24/15

SUBJECT: APPROVAL OF THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT CONCERNING THE LITIGATION ARISING OUT OF MEASURE B WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION (SJPOA) AND THE SAN JOSE FIRE FIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 230 (IAFF, LOCAL 230) AND RELATED APPROPRIATION ACTIONS

RECOMMENDATION

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

- a) Approval of the terms of the Alternative Pension Reform Settlement Framework agreement between the City and the San Jose Police Officers' Association (SJPOA) and San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230).
- b) Authorize the City Manager to negotiate and execute a Tripartite Retirement Memorandum of Agreement between the City, the SJPOA, and IAFF, Local 230.
- c) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
 - i. Establish a City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,500,000; and
 - ii. Decrease the Fiscal Reform Plan Implementation Reserve in the amount of \$1,500,000.

OUTCOME

Approval of the terms of the Alternative Pension Reform Settlement Framework agreement, and authorize the City Manager to negotiate and execute the Tripartite Retirement Memorandum of Agreement between the City, the SJPOA and IAFF, Local 230.

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 2 of 14

BACKGROUND

The City of San Jose is currently in litigation with the San Jose Police Officers' Association (SJPOA), the San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230), and other employee and retiree groups over the pension reform ballot measure known as Measure B. Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for 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 this year.

In April 2015, settlement discussions with the SJPOA and IAFF, Local 230 commenced and, on or about July 15, 2015, the City, the SJPOA and IAFF, Local 230 reached an agreed upon settlement on an Alternative Pension Reform Settlement Framework (Framework). The attached Framework presents a path toward the settlement of litigation over Measure B. The settlement framework is subject to a final overall global settlement with all parties related to Measure B litigation. It is also contingent on the City and the SJPOA reaching agreement on a successor Memorandum of Agreement (MOA). Those discussions are currently ongoing.

The City Council has not yet made a decision regarding the path by which to implement the framework, such as through a 2016 ballot measure to modify Measure B or through the quo warranto process to remove the language attributable to Measure B from the City Charter. The City Council will consider that issue at a subsequent meeting.

In summary, the Alternative Pension Reform Settlement Framework will:

- Settle significant litigation with SJPOA and IAFF, Local 230 with the Framework's alternative strategy to pension reform. This agreement should avoid further litigation costs with these groups.
- Over the next 30+ years, provide savings of approximately \$1.7 billion from the revised Tier 2 compared to Tier 1 (\$1.15 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$244.2 million), and from the elimination of the SRBR (\$270 million).
- Modify Tier 2 pension benefits for sworn employees to levels similar to other Bay Area agencies to attract and retain sworn employees, providing a competitive Tier 2 pension benefit at a reduced cost. The new Tier 2 benefit has several differences from the California Public Employees' Retirement System (CalPERS) second tier benefit (the Public Employees' Pension Reform Act, or PEPR) that reduce costs. For example, the accrual rate is back loaded so that the more years of service an employee has, the higher accrual rate they receive, which is a significant difference from the Tier 2 benefit in other agencies and reduces the cost of the Tier 2 benefit significantly. This also incentivizes longevity. This Tier 2 benefit also has a maximum benefit of 80%, while other agencies have no maximum benefit.

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 3 of 14

- Allow Tier 1 employees who left the City and either subsequently have returned or return in the future to return into the Tier 1 benefit, incentivizing employees who have left to return to City service.
- Preserve 50/50 risk sharing with employees through the cost sharing of a 50/50 split in normal costs and any future unfunded liability associated with the Tier 2 benefit. In other agencies, the cost sharing is just 50/50 of normal cost.
- Close the retiree healthcare defined benefit plan to new and Tier 2 employees, and allow an opt-out for Tier 1 employees, into a defined contribution Voluntary Employee Beneficiary Association (VEBA) subject to legal and IRS approval. The VEBA has no employer contribution and is completely funded by the employee. Because the VEBA has a lower contribution than the existing defined benefit plan, it reduces retiree healthcare costs for sworn employees and increases their take home pay, while reducing the City's liability for retiree healthcare.
- Implement a new lowest cost healthcare plan in order to reduce retiree healthcare costs.
- Allow retirees with alternate coverage to receive 25% credit towards future premiums instead of being covered by the City in order to reduce costs (similar to "in lieu" programs commonly used for active employees).
- Reinstate the Police and Fire Retirement Plan's previous definition of disability which is comparable to other agencies.
- Create an Independent Medical Panel appointed by the Retirement Board which will determine disability eligibility instead of the Retirement Board. The agreement creates a process and minimum qualifications for the Independent Medical Panel.
- Create a workers' compensation offset to disability retirements received by Tier 2 employees represented by the SJPOA and IAFF, Local 230.
- Create a committee for the City and the SJPOA and IAFF, Local 230 to continue discussions on wellness and workers' compensation to streamline the process and reduce costs.
- Continue the elimination of the Supplemental Retiree Benefit Reserve (SRBR) from the Police and Fire Retirement Plan, solidifying \$9 million in General Fund savings.
- Allow for continued discussions regarding the following provisions of Measure B not addressed in this agreement:
 - Actuarial soundness
 - Voters' ability to vote on any benefit increases

The below chart depicts the realized savings from Measure B and retirement reform as shown to the Council during the January 20, 2015, Study Session regarding General Fund Structural Budget Deficit History and Service Restoration Priorities and Strategies:

Retirement Reform Estimate	GF Savings
Implemented	
SRBR Elimination	\$13 M
Retiree Healthcare Changes (lowest cost plan)	\$7 M
New Tier 2 Retirement Plans	\$5 M
Subtotal Implemented	\$25 M

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 4 of 14

The Settlement Framework preserves these savings, including \$9 million from the continued SRBR elimination for the Police and Fire Retirement Plan (the remaining \$4 million is attributable to the Federated Retirement System). Additionally, the new lowest cost plan saves additional retiree medical funds (including an estimated \$4.6 million in the first year) while the prior savings continue. The exception is the increased cost for the revised Tier 2 benefit. In the first year of the revised Tier 2 Police and Fire pension benefit, the cost will increase from the current Tier 2 by \$400,000.

The Alternative Pension Reform Settlement Framework was ratified by IAFF, Local 230 on July 21, 2015, and is pending ratification by the SJPOA, which will notify the City of the ratification results as soon as ratification is completed.

ANALYSIS

A complete copy of the Alternative Pension Reform Settlement Framework is attached (Attachment A). The following is a summary of the key provisions of the Framework applicable to employees represented by the SJPOA and IAFF, Local 230.

Tripartite Retirement Memorandum of Agreement

A Tripartite agreement between the City, the SJPOA and IAFF, Local 230, will be finalized to memorialize all agreements related to retirement.

The term of the Tripartite MOA shall be July 1, 2015 – June 30, 2025.

Revised Tier 2

In order to address recruitment and retention issues, this agreement modestly increases the Tier 2 benefits; however, the City's portion of the Normal Cost will go from 11.2% to an estimated 14.7%, which is still drastically lower than the City's portion of the Normal Cost for Tier 1, which is 31.6%.

Employees hired on or after the effective date of the ordinance implementing these changes will be subject to the following pension benefits. Any current Tier 2 members will be retroactively placed in the revised Tier 2.

Pension Formula Accrual Rate

Years: 1-20	2.4%
21-25	3.0%
<u>26+</u>	<u>3.4%</u>

Maximum Benefit

The above accrual rate is subject to a maximum of 80% of final compensation.

Final Compensation

Average annual earned pay of the highest three consecutive years of service. Final Compensation will include base pay, holiday in lieu pay, anti-terrorism training pay, POST pay, and base FLSA pay.

Revised Tier 2
(cont'd)

Minimum Service

Tier 2 employees shall be eligible for a service retirement after earning five (5) years of retirement service credit and meeting the age requirement.

Normal Age of Retirement

Employees shall be eligible to retire at age 57 with at least five (5) years of retirement service credit.

Tier 2 employees have the ability to retire at age 50 with a 7% reduction per year below age 57, prorated to the closest month.

Retiree Cost of Living Adjustment (COLA)

Plan members shall receive a cost of living adjustment limited to the increase in the consumer price index, or CPI (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 2.0% per fiscal year. The first COLA will be prorated based on the number of months retired.

No Retroactive Pension Increases or Decreases

Any changes in pension benefits will be on a prospective basis only.

Current Tier 2 Employees

The Police and Fire employees currently in Tier 2 will be retroactively moved to this revised Tier 2 benefit.

Any costs, including unfunded liabilities associated with moving the current Tier 2 employees into the revised structures, will be shared between the employees and the City on a 50/50 basis with no ramp up and amortized as a separate liability over a minimum of 16 years.

Vesting Language

The City will remove the language currently contained in City Charter Section 1508-A referring to limiting vesting of benefits.

Cost Sharing

Employees and the City will share equally in all costs of Tier 2 to the pension plan, including all normal costs and unfunded liabilities.

If an unfunded liability exists for Tier 2 members, employees will contribute based on a “ramp up” to paying 50% of the liability. In years where an unfunded liability exists, the member contribution will be increased by increments of 0.33% per year until such time that the contribution associated with the unfunded liability is shared 50/50. Until such time, the City will pay the balance of the contribution associated with the unfunded liability of the Tier 2 plan.

Revised Tier 2
(cont'd)

For example, if the unfunded liability contribution rate of the Police and Fire Tier 2 plan is 2% for three years, the following ramp-up schedule will occur:

Year	Total UAL Rate	City UAL Rate	Employee UAL Rate
1	2.00%	1.67%	.33%
2	2.00%	1.34%	.66%
3	2.00%	1.01%	.99%

Disability Benefits

Service Connected

Plan members eligible for a service connected disability retirement benefit shall receive an annual benefit equal to the greater of 50% of final compensation, a service retirement allowance if the member is eligible, or an actuarially reduced factor, determined by the plan's actuary, for each quarter year that the member's service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not eligible for a service retirement.

Non-Service Connected

Plan members eligible for a non-service connected disability retirement benefit shall receive an annual benefit equal to the either 1.8% per year if the member is less than age 50 or the amount of the service pension benefit if the member is older than age 50.

Survivorship Benefits

The survivorship benefits for Tier 2 shall be the same as the survivorship benefits for Tier 1; however, these benefits will be reduced to reflect the 80% pension benefit maximum.

Rehired Employees/New Hires From Outside Agencies

Former City Tier 1 sworn employees who have been rehired since the implementation of the Police and Fire Tier 2 plans, or rehired after the effective date of this agreement, will return to Tier 1. Any lateral hires that are defined as "Classic" members under the Public Employees' Pension Reform Act (PEPRA), regardless of the tier of their previous employer, will also become Tier 1 members. Employees who are considered "new" employees under PEPRA will enter the revised Tier 2 plan.

The costs associated with the transition of current Tier 2 employees into Tier 1 will be shared between the employees and the City on a 50/50 basis with no ramp up. This will be a separate liability amortized over 16 years.

Revised Tier 2
(cont'd)

Service Credit Purchases

Tier 2 members shall be eligible to make the same service credit purchases as Tier 1, with the exception of purchases of service credit related to suspension. All costs associated with service credit purchases will be paid for by the Tier 2 member.

Actuarial Assumptions

The City, the SJPOA and IAFF, Local 230 will work with their respective actuaries to jointly request that the Police and Fire Department Retirement Plan Board of Administration and its actuary carefully consider the new Tier 2 actuarial assumptions. In particular, the parties will request that the Board and its actuary incorporate assumptions similar to the CalPERS PEPRA rates of retirement, which are expected to reduce the cost of the benefit.

Tier 2 Costing

The below chart indicates the difference in the current Tier 1 and Tier 2 pension normal cost rates for Fiscal Year 2015-2016 in comparison to the revised Tier 2 estimated normal cost based on calculations by the City's actuary. The retirement board's actuary, Cheiron, will be asked to calculate the final contribution rates. The City's actuary, Bartel Associates, valued the revised Tier 2 benefit using two methods: Cheiron's current Tier 2 retirement rates and the retirement rates used by CalPERS for a similar pension formula. Please refer to Attachment B.

	Current Tier 1	Current Tier 2	Agreement Tier 2 Formula using	
			Cheiron Tier 2 Retirement Rates	CalPERS Retirement Rates for Similar Formula
Total	43.0%	22.4%	30.5%	29.4%
City	31.6%	11.2%	15.25%	14.7%
Member	11.4%	11.2%	15.25%	14.7%

The City's actuary estimates that the savings between the revised Tier 2 benefit and the current Tier 1 normal cost would be \$1.15 billion over 30 years.

Retiree
Healthcare

The current retiree healthcare defined benefit program will be closed to new employees and current Tier 2 employees.

Voluntary Employee Beneficiary Association (VEBA)

The City will implement a defined contribution retiree healthcare benefit in the form of a VEBA.

New and current Tier 2 members shall contribute 4% of base pay to the VEBA. There will be no City contribution into the VEBA.

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 8 of 14

Retiree
Healthcare
(cont'd)

New Lowest Cost Medical Plan

Effective after the final overall agreement is reached, the Kaiser NCAL 4307 Plan shall be available to all active sworn employees, in addition to the existing plan options for active sworn employees. Currently, the lowest cost medical plan for Police and Fire employees is the Kaiser \$25 co-pay plan. This plan will reduce the total premium payment by an estimated \$199 for single coverage and an estimated \$496 for family coverage per month. The Kaiser 4307 Plan has a \$3000 deductible and qualifies for a Health Savings Account (HSA).

The current cost sharing arrangement of the City paying 85% of the lowest cost non-deductible HMO plan will continue for active employees but active employees have the option of selecting the new lowest cost healthcare plan. For retiree healthcare, the retirement plan pays 100% of the lowest cost plan available to active employees. The Kaiser 4307 Plan will be the lowest cost plan available to active employees after implementation.

The lowest cost plan for any future or current retirees will be set so that any plan may not be lower than the "silver" level of health insurance as specified by the current Affordable Care Act as of the date of the agreement. The "silver" plans are estimated to be 70% of healthcare expenses.

Tier 1 Opt-Out

Upon legal and IRS verification, Tier 1 employees will be offered a one-time, irrevocable election to opt-out of the current defined benefit retiree healthcare plan and instead be placed in the VEBA. Tier 1 employees will be offered individual, independent financial counseling to assist with their decision.

If legally permissible, deferred vested rehires will also be offered a one-time irrevocable opt-out upon return to City employment.

Tier 1 members who choose to opt-out will contribute 5% of base pay to the VEBA. Tier 1 members who elect to remain in the defined benefit plan will contribute 8% to the defined benefit plan. The difference between the 5% contribution to the VEBA and the 8% contribution to the plan will be taxable to the employee.

The City will contribute the amount necessary (when combined with the mandatory employee contributions) to ensure the defined benefit plan receives the full Annual Required Contribution (ARC). City contributions will be expressed as a percentage of payroll for all bargaining unit members and the City will contribute based on all members (including Tier 2). If the City portion reaches 11% of payroll, the City may decide to contribute a maximum of 11%.

Retiree
Healthcare
(cont'd)

If, subsequent to IRS approval, a Tier 1 employee elects to opt-out of the defined benefit retiree healthcare plan, they will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare plan, with no interest included. These funds will be placed in the employee's VEBA.

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees who opt-out exceeds the amount of funds in the VEBA, the parties will meet and confer over the opt-out and whether or not it can be implemented through other means.

Medicare Part A and B Enrollment

A member of the Police and Fire Department Retirement Plan shall be required to enroll in Medicare Part A and B based on federal regulations and insurance provider requirements.

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.

Accumulated credits that are never used by the retiree or survivor/beneficiary are forfeited. There is no cap on the amount of credit accumulated.

Catastrophic Disability Healthcare Program (CDHP)

VEBA members who receive a service-connected disability will be eligible for 100% of the single premium for the lowest cost healthcare plan until the member is eligible for Medicare (usually age 65). The member must not be eligible for an unreduced service retirement, must exhaust the funds in the VEBA before becoming eligible for the CDHP, and submit an affidavit on an annual basis verifying the member does not have employment that offers healthcare. A member may re-enroll in the CDHP if they lose employment that offers healthcare coverage before Medicare eligibility.

30 Year Fresh Start Amortization

The City will continue considering whether to recommend that the retirement boards use a 30-year fresh start amortization for the Police and Fire retiree healthcare actuarial valuation.

**Retiree
Healthcare
(cont'd)**

Retiree Healthcare Costing

The City's actuary estimates that the changes in the lowest cost healthcare and the opt-out will lower the actuarial liability by 21%. The actuary assumed that 50% of those at younger ages with shorter service grading to 0% of those at older ages with longer service currently in the defined benefit plan will opt-out. Please refer to Attachment C.

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 208.4	\$ 180.7	\$ 135.8	\$ (72.6)	-35%
Inactive	347.4	305.8	305.8	(41.5)	-12%
Total	555.7	486.5	441.6	(114.1)	-21%

The City's actuary estimates that, over the next 35 years, the total dollar savings between the existing retiree healthcare plan and the new plan (without the fresh start) would be \$244.2 million. It is important to note that the actual cost impact will be determined by the retirement board's actuary.

**Disability
Definition
and Process**

The City will reinstate the previous disability retirement definition for all sworn employees.

Disability Process Deadlines

Applications for disability retirement must be filed within one month of separation from City service rather than the previous one year time period. Exceptions contained in the Municipal Code will still apply. The applicants must submit medical paperwork including, but not limited to, the initial nature of the disability and current medical treatments. The medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances. Application must not be deferred past four (4) years of the date of application unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

Disability Hearing Process

The Police and Fire Retirement Board will appoint an independent medical review panel of three (3) experts to grant or deny disability retirement applications. The panel will make decisions based on a majority vote. The independent medical review panel may decide, based on its own motion or request from a member, to determine if a disability retirement recipient is capable of returning to work.

The appointment shall be approved by a vote of six (6) of nine (9) trustees.

**Disability
Definition
and Process
(cont'd)**

Each member of the independent medical review panel will serve four year terms and meet the following minimum qualifications:

- I. 10 years of practice after completion of residency.
- II. Currently in practice or retired.
- III. Not a prior or current City employee.
- IV. No prior experience providing the City or retirement boards with medical services. The exception shall be prior service as an independent panel member seeking reappointment.
- V. No prior experience as a qualified medical examiner or agreed medical evaluator.
- VI. Varying types of medical practice experience.

Administrative Law Judge (ALJ)

Decisions to grant or deny a disability retirement made by the independent medical review panel may be appealed to an ALJ. Either the applicant or the City has forty-five (45) days to appeal the decision made by the independent medical review panel. The appeal hearing must happen within ninety (90) days of the notice of appeal, unless a later date is mutually agreed upon. The ALJ decision will be considered final.

Modified Duty (SJPOA – Article 39)

The City and the SJPOA will discuss the modified duty positions during collective bargaining. Until the parties agree, the number of modified duty positions will increase to 30. On an annual basis, the independent medical review panel will review the status of the employees on modified duty until the program is modified.

Workers' Compensation Reform

Tier 2 members will have the Federated workers' compensation language as currently contained in the Municipal Code apply to qualifying disability retirement allowances to a maximum aggregate total of \$10,000 per Tier 2 employee.

The parties will convene a Public Safety Wellness Improvement Committee to discuss wellness and workers' compensation in order to streamline the process, reduce costs, decrease the number of work-related injuries through prevention, and expedite the return to work of those injured or ill.

**Supplement
Retiree Benefit
Reserve
(SRBR)**

The elimination of the SRBR will continue.

Guaranteed Purchasing Power (GPP)

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all 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.

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 12 of 14

**Supplemental
Retiree Benefit
Reserve
(SRBR)
(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 2016.

The number of Tier 1 retirees who currently fall below 75% purchasing power is approximately 55.

The SJPOA and IAFF, Local 230 will have a right to tender defense of the litigation to the City in the event of litigation brought forward by a retired member or members of the SJPOA or IAFF, Local 230, against SJPOA or IAFF, Local 230 challenging this settlement framework agreement.

SRBR Costing

By continuing the elimination of the SRBR, the City will solidify the \$9 million General Fund savings already achieved by the City as a result of Measure B. Assuming the savings of \$9 million continues annually, using simple arithmetic, the elimination of the SRBR is estimated to result in an approximate savings of \$270 million over 30 years. It should be noted that the calculation of the \$9 million was based on the information available to the City when the SRBR was initially eliminated. Please refer to Attachment D.

**Memorandum
of Agreement**

This Settlement Framework agreement is contingent on reaching a successor MOA with the SJPOA.

**Attorneys'
Fees**

To settle attorneys' fee related to Measure B legal matters, the City shall pay the SJPOA and IAFF, Local 230, \$1.5 million within thirty (30) days of the settlement framework agreement being approved by City Council.

There will be final and binding arbitration before a JAMS judge to resolve any additional claims for attorneys' fees related to Measure B litigation (including administrative proceedings) and resolution.

Quo Warranto

In the Mayor's March 11, 2015, letter to all bargaining units sent on behalf of the City Council, the direction was that a quo warranto process would be used to replace the provisions of Measure B, contingent on the following conditions being met:

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 13 of 14

Quo Warranto
(cont'd)

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

Should an agreement with the Federated litigation plaintiffs and Retirees' Association not be reached or the quo warranto process does not permit the replacement of Measure B, the SJPOA and IAFF, Local 230 will stay all Measure B litigation and permit this agreement to appear on a November 2016 ballot as a measure to replace Measure B.

Currently, no decision has been made on the process by which to enact this agreement. This information will be brought forward on a later date. If the agreement is implemented through the Quo Warranto process, the City and the bargaining units will discuss the City Charter provisions requiring voter approval of benefits and actuarial soundness for consideration in a November 2016 ballot measure.

EVALUATION AND FOLLOW-UP

The City, the Federated bargaining units, and the Federated Retirees' Association are continuing settlement discussions related to litigation arising out of Measure B. The goal of these discussions is to reach a global settlement with all parties to the litigation. The City Administration will continue to keep the Council apprised of any updates related to this matter.

Once a decision has been made on the recommended process by which to enact this Settlement Framework agreement, the City Administration will bring it forward to City Council for consideration.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the August 11, 2015, City Council Agenda.

July 24, 2015

Subject: Approval of Terms of an Agreement with the SJPOA and IAFF, Local 230

Page 14 of 14

COORDINATION

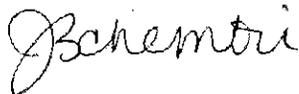
This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

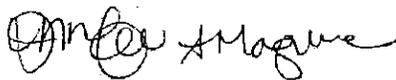
Appropriation actions in the amount of \$1.5 million, funded from the Fiscal Reform Plan Implementation Reserve, are recommended as part of this memorandum to pay attorney's fees related to the settlement of Measure B. The cost/savings estimates of each element of the framework are noted above and in the attachments, and it is estimated that, over 30+ years, the City will realize savings of approximately \$1.7 billion from the revised Tier 2 compared to Tier 1 (\$1.15 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$244.2 million), and from the elimination of the SRBR (\$270 million). With the exception of the SRBR, it is important to note that these estimates were done by the City's actuary and actual costs/savings will be determined by the Retirement Board's actuary.

CEQA

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



JENNIFER SCHEMBRI
Director of Employee Relations



JENNIFER A. MAGUIRE
Senior Deputy City Manager / Budget Director

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

Attachment A – Alternative Pension Reform Settlement Framework Agreement

Attachment B – Letter from John Bartel dated July 23, 2015 on Tier 2 Costing

Attachment C – Letter from John Bartel dated July 23, 2015 on Retiree Healthcare Costing

Attachment D – Letter from John Bartel dated July 23, 2015 on Guaranteed Purchasing Power

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

(Evidence Code Section 1152)

Settlement Discussion Framework Language

The City of San Jose, the San Jose Fire Fighters, IAFF Local 230, and the San Jose Police Officers' Association have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The parties have reached the below framework for a tentative settlement of San Jose Police Officers' Association v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-22926, Sapien, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-13-CV-225928 (and associated actions), The People of the State of California ex rel. San Jose Police Officers' Association v. City of San Jose, Santa Clara County Superior Court, No. 1-13-CV245503 (quo warranto proceedings), International Association of Firefighters, Local 230 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-969-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.

It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all parties/litigants (including the retirees), and ratified by union membership and approved by the City Council.

MARCH 11th LETTER

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

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

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

Retirement Memorandum of Agreement

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

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

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

- a. Any such changes in retirement benefits will only be applied on a prospective basis.
7. No pension contribution holiday
8. Pensionable pay will include base pay, holiday in lieu pay, EMT pay, anti-terrorism training pay, POST pay, and base FLSA pay as per Tier 1 members.
9. Current Tier 2 sworn employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 16a (returning Tier 1).
 - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
10. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
11. Tier 2 cost sharing
 - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
 - b. In the event an unfunded liability is determined to exist for the Police and Fire Tier 2 retirement plans, Tier 2 employees will contribute (the "Ramp Up") toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between employee and employer
 - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability
12. Cost of Living Adjustment (COLA)

- a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) or 2.0%, whichever is lower
- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement

13. Disability Benefit (Tier 2)

- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to the greater of:
 - i. 50% of final compensation;
 - ii. A service retirement allowance, if he or she qualified for such;
 - iii. An actuarially reduced factor, as determined by the plan's actuary, for each quarter year that his or her service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not qualified for a service retirement.
- b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
 - i. If less than age 50: 1.8% per year of service; or
 - ii. If older than age 50: The amount of service pension benefit as calculated based upon the service pension formula.

14. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.

15. Tier 2 members will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving

spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members will be provided with survivor benefits in the event of death before retirement. These benefits will be the same as Tier 1 members but reduced to reflect the new 80% pension cap versus the current 90% pension cap.
16. "Classic" Lateral will become Tier 1, including former San Jose Fire Department /San Jose Police Department sworn employees
- a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
 - b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
 - c. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.
 - d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2.
17. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

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

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

1. Close the current defined benefit retiree healthcare program to new employees and current Tier 2 employees
2. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
3. New lowest cost medical plan
 - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members

- b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
 - c. The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
4. Potential Tier 1 opt-out
- a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.
5. Enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers
6. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis,

or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

7. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
8. The VEBA contribution rate for all new hires and Tier 2 members will be 4.0% of base pay. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 5.0% of base pay.
9. Members who remain in the Defined Benefit retirement healthcare plan will contribute 8.0% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 11% of payroll, the City may decide to contribute a maximum of 11%.

10. The parties have been advised that the difference between the defined benefit contribution rate (8.0%) and the VEBA opt-out contribution rate (5.0%) will be taxable income.
11. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
12. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for their prior contributions. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.

13. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member and is eligible for Medicare (usually age 65).
- a. Qualifications - The member must not be eligible for an unreduced service retirement.
 - b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
 - c. Upon reaching Medicare eligibility, the benefit will cease
 - d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
 - e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

Disability Definition and Process

1. Reinstate the previous City definition for disability for all sworn employees
2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code § 3.36.920 A (4).
3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless

- the independent medical review panel grants a longer deadline due to extenuating circumstances.
4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
 5. The member and the City may have legal representation at hearings
 6. Independent panel of experts appointed by 6 of 9 retirement board members will evaluate and approve or deny disability retirement applications
 - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel
 - b. Each member shall have a four-year term and meet the following minimum qualifications
 - i. 10 years of practice after completion of residency
 - ii. Practicing or retired Board Certified physician
 - iii. Not a prior or current City employee
 - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
 - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
 - vi. Varying medical experience
 - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
 - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work

7. Administrative law judge

- a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
- b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
- c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
- d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.

8. Modified Duty (POA – Article 39)

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

9. Worker's Compensation Reform

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

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

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

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR

- a. The funds credited to the SRBR will continue to be credited to the Police and Fire Department Retirement Plan to pay for pension benefits

2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.

- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 55.
- e. In the event of litigation by a retired member or members of POA and/or IAFF Local 230 challenging this provision of the Settlement Agreement against POA and/or IAFF Local 230, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend POA and/or IAFF Local 230 with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

Memoranda of Agreement (MOA)

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

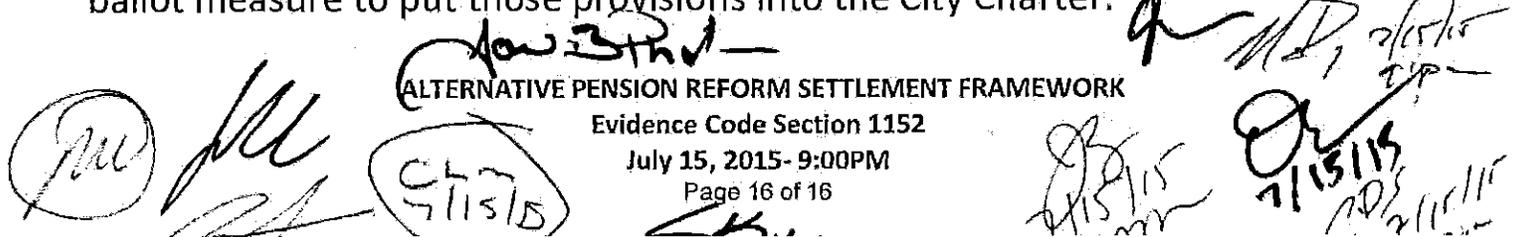
Attorney's Fees

1. \$1.5 million within 30 days of settlement framework being approved by Council in open session
2. The parties agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B
3. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
4. The City shall pay the arbitrator's fees and costs, including court reporter
5. The parties agree that the issue presented shall be: Whether the Unions are entitled, under any statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation (including administrative proceedings) and resolution of Measure B? If so, in what amounts?

Implementation Timeline

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

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by SJFF Local 230 or SJPOA. If this agreement is implemented through the quo warranto process, the parties agree to discuss provisions for voter approval of benefits and actuarial soundness for consideration of a 2016 ballot measure to put those provisions into the City Charter.



 ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK
 Evidence Code Section 1152
 July 15, 2015- 9:00PM
 Page 16 of 16



July 23, 2015

Jennifer Schembri
 Interim Director
 City Manager's Office of Employee Relations
 200 E. Santa Clara Street, 3rd Floor Wing
 San José, CA 95113-1905

Re: San Jose Police Officers and Fire Fighters Tier 2 Pension Benefit

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters Tier 2 pension benefit agreement. We understand the agreement will redefine Tier 2 pension benefits as:

■ Benefit formula based on City service:

Years of City service	Benefit Accrual Rate
1-20	2.4%
21-25	3.0%
26+	3.4%

■ Normal retirement age 57 with 7% reduction for each year retirement precedes age 57

■ Provide the following ancillary benefits:

- Cost of Living Adjustments based on the lessor of CPI and 2%
- Automatic 50% survivor benefit
- Disability benefit the greater of:
 - 50% of current pensionable wages
 - Service retirement benefit if eligible to retire
 - Actuarial equivalent of service retirement benefit if not eligible to retire
- 5 year vesting

Analysis

We priced the agreement Tier 2 formula using both Cheiron's current Tier 2 retirement rates and retirement rates used by CalPERS for a similar pension formula. The following table shows the estimated impact on the Tier 2 Normal Cost:

	Current Tier 1	Current Tier 2	Agreement Tier 2 Formula using	
			Cheiron Tier 2 Retirement Rates	CalPERS Retirement Rates for Similar Formula
Total	43.0%	22.4%	30.5%	29.4%
City	31.6%	11.2%	15.25%	14.7%
Member	11.4%	11.2%	15.25%	14.7%

We believe the CalPERS retirement rates for similar formulas are reasonable retirement rates and would recommend Cheiron consider using these retirement rates rather than the existing Tier 2 retirement rates.



The following table projects out City cost assuming Tier 2 benefits were the same as Tier 1, under current Tier 2 benefit formula and under the agreed to Tier 2 benefit formula over the next 30 years (note agreed to projections are based on the CalPERS retirement rates for a similar benefit formula):

City of San Jose
Police & Fire
Projection of Additional City Cost of Agreed to Pension Tier 2 Benefit Formula
 (\$ millions)

FYE	Total Proj. Payroll	Tier 2 Benefit Unchanged		Tier 2 Benefit Restored to Tier 1 Level		Tier 2 Benefit As Bargained	
		22.4% Tier 2 NC		43.0% Tier 2 NC		29.4% Tier 2 NC	
		Total City Cost		Total City Cost		Total City Cost	
		% of pay	\$	% of pay	\$	% of pay	\$
2016	194.3	11.2%	1.4	31.6%	3.9	14.7%	1.8
2017	200.6	11.2%	2.0	31.6%	5.8	14.7%	2.7
2018	207.0	11.2%	2.9	31.6%	8.1	14.7%	3.8
2019	213.9	11.2%	3.9	31.6%	10.9	14.7%	5.1
2020	220.9	11.2%	5.0	31.6%	14.1	14.7%	6.6
2021	228.1	11.2%	6.2	31.6%	17.6	14.7%	8.2
2022	235.5	11.2%	7.8	31.6%	22.0	14.7%	10.2
2023	243.1	11.2%	9.5	31.6%	26.9	14.7%	12.5
2024	251.0	11.2%	11.5	31.6%	32.3	14.7%	15.0
2025	259.2	11.2%	13.4	31.6%	37.9	14.7%	17.6
2026	267.6	11.2%	15.2	31.6%	43.0	14.7%	20.0
2027	276.3	11.2%	17.1	31.6%	48.3	14.7%	22.4
2028	285.3	11.2%	19.2	31.6%	54.1	14.7%	25.2
2029	294.6	11.2%	21.2	31.6%	59.7	14.7%	27.8
2030	304.2	11.2%	23.1	31.6%	65.2	14.7%	30.3
2031	314.0	11.2%	25.0	31.6%	70.5	14.7%	32.8
2032	324.2	11.2%	27.0	31.6%	76.2	14.7%	35.4
2033	334.8	11.2%	29.1	31.6%	82.0	14.7%	38.2
2034	345.7	11.2%	31.4	31.6%	88.6	14.7%	41.2
2035	356.9	11.2%	33.9	31.6%	95.5	14.7%	44.4
2036	368.5	11.2%	36.3	31.6%	102.4	14.7%	47.6
2037	380.5	11.2%	38.5	31.6%	108.7	14.7%	50.6
2038	392.8	11.2%	40.7	31.6%	114.7	14.7%	53.4
2039	405.6	11.2%	42.7	31.6%	120.6	14.7%	56.1
2040	418.8	11.2%	44.9	31.6%	126.7	14.7%	59.0
2041	432.4	11.2%	47.0	31.6%	132.7	14.7%	61.7
2042	446.5	11.2%	49.1	31.6%	138.4	14.7%	64.4
2043	461.0	11.2%	51.0	31.6%	143.9	14.7%	66.9
2044	475.9	11.2%	52.9	31.6%	149.2	14.7%	69.4
2045	491.4	11.2%	54.8	31.6%	154.5	14.7%	71.9
Total			763.6		2,154.5		1,002.3

Jennifer Schembri
July 23, 2015
Page 3



The agreement also provides that Tier 2 members will pay 50% of the unfunded liability contribution. Even though there is ramp up feature to this cost sharing we believe, if unfunded liabilities do materialize this will be a cost savings feature for the City.

Assumptions

Study results were estimated using the same assumptions, except as noted above for retirement rates, as the Cheiron June 30, 2014 actuarial valuation.

* * *

To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associates
Marilyn Oliver, Bartel Associates

\\bartcafs01\bartel_associates\clients\city of san jose\projects\council 2015\ba sanjoseci 15-07-23 po-ff t2.docx



July 23, 2015

Jennifer Schembri
Interim Director
City Manager's Office of Employee Relations
200 E. Santa Clara Street, 3rd Floor Wing
San José, CA 95113-1905

Re: San Jose Police Officers and Fire Fighters Retiree Healthcare Agreement

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters retiree healthcare agreement. We understand the agreement will:

- Establish a VEBA
 - New hires will participate in the VEBA only and will not be eligible for current plan benefits (except as noted below for subsidized premiums).
 - Current retiree healthcare participants would be given the option to "opt-out" of the current plan and join the VEBA. This, in conjunction with closing the plan to new hires will effectively mean the current benefit will wear away over time.
 - Historical contributions to the current plan would be transferred for anyone opting out of the current plan.
- Contributions:
 - City will contribute the full ARC, less member contributions, to the current plan based on total pensionable pay regardless of whether an individual participates in the current plan or the VEBA. (note the City, per the agreement, may cap its contribution at 11% of total pensionable pay)
 - City will not contribute to the VEBA.
 - Members remaining in the current plan will contribute 8% of their pensionable pay.
 - Members participating in the VEBA will not contribute to the current plan.
- All retirees, whether participating in the current plan or the VEBA would be allowed to participate in the City's medical plan paying subsidized premiums.
- Adoption of the Kaiser 4307 medical plan for actives and retirees.
- Proposal is contingent on cost analysis determining that funding will be adequate for the current plan.
- Add an "in lieu" feature to the current plan that would allow retirees to receive a credit for 25% of the lowest cost plan as a credit toward future healthcare premiums, in lieu of receiving healthcare coverage.



Analysis – Funding Valuation Basis

The following table shows the estimated impact of the proposed changes on the Actuarial Liability under the Funding Valuation basis which uses a 7% discount rate and includes the explicit subsidy only (millions):

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 208.4	\$ 180.7	\$ 135.8	\$ (72.6)	-35%
Inactive	<u>347.4</u>	<u>305.8</u>	<u>305.8</u>	<u>(41.5)</u>	-12%
Total	555.7	486.5	441.6	(114.1)	-21%

The following table shows the estimated impact of the proposed changes on the contribution rates for the explicit subsidy under the Funding Valuation basis. This table is based on current amortization periods (24 years for Police and 26 years for Fire).

	Uncapped			Capped		
	Current Valuation	With Opt Out	% of Total Payroll Impact	Current Valuation	With Opt Out	% of Total Payroll Impact
Police Member	11.71%	8.00%	-7.26%	10.00%	8.00%	-5.55%
Police City	<u>12.82%</u>	<u>11.98%</u>	<u>-0.84%</u>	<u>11.00%</u>	<u>11.00%</u>	<u>0.00%</u>
Total¹	24.53%	16.43%	-8.10%	21.00%	15.45%	-5.55%
Fire Member	10.54%	8.00%	-6.09%	9.74%	8.00%	-5.29%
Fire City	<u>11.56%</u>	<u>10.26%</u>	<u>-1.30%</u>	<u>10.62%</u>	<u>10.26%</u>	<u>-0.36%</u>
Total¹	22.10%	14.71%	-7.39%	20.36%	14.71%	-5.65%

We are also attaching a table that projects City contributions under three scenarios: current plan with current amortization periods, agreement plan with 30 year fresh start amortization period and agreement plan with current amortization periods. Please note the projections based on the agreement include an assumption of additional Tier 2 payroll growth over the next 3 years.

The following table shows the impact of the proposed changes on FY 2015/16 dollar contributions for the explicit subsidy with total contributions uncapped but member contributions capped and with current amortization periods, rounded to the nearest \$100,000:

	Current	With Opt Out	Savings
Police Total NC	\$ 9,100,000	4,100,000	5,000,000
Police UAL	<u>19,500,000</u>	<u>15,000,000</u>	<u>4,500,000</u>
Total Police	28,600,000	19,100,000	9,500,000
Member	<u>11,600,000</u>	<u>5,200,000</u>	<u>6,500,000</u>
Net Police	17,000,000	13,900,000	3,000,000
Fire Total NC	\$6,100,000	2,800,000	3,300,000
Fire UAL	<u>11,100,000</u>	<u>8,700,000</u>	<u>2,400,000</u>
Total Fire	17,200,000	11,500,000	5,700,000
Member	<u>7,600,000</u>	<u>3,500,000</u>	<u>4,100,000</u>
Net Fire	9,600,000	8,000,000	1,600,000
Total Net Safety	\$ 26,600,000	21,900,000	4,600,000

¹ The proposal requires member contribution rate be applied only to pensionable pay for those remaining in the current plan while the City contribution rate would be applied to total pensionable pay. Since the member and City rates apply to different pensionable pay the total percentages were calculated for the "With Opt Out" scenario based on total pensionable pay, including those assumed to opt out.



The Net contributions are calculated with a cap on Member contribution rates but without regard to any cap on City contribution rates.

Analysis – GASB Valuation Basis

The following table shows the estimated impact of the proposed changes on the Actuarial Liability under the GASB Valuation basis which uses a 6% discount rate and includes both the explicit and implicit subsidy (millions):

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 277.7	\$ 247.7	\$ 188.6	\$ (89.1)	-32%
Inactive	429.0	380.6	380.6	(48.4)	-11%
Total	706.7	628.4	569.2	(137.5)	-19%

The following table shows the estimated impact of the proposed changes on the Annual Required Contribution for the implicit and explicit subsidy under the GASB Valuation basis (millions):

	Current Valuation	With Opt Out	Total Impact
Total ARC \$	\$ 51.0	\$ 34.0	\$ (17.0)
Total ARC %	27.09%	18.07%	-9.02%

The ARC %'s are based on total pensionable pay, including those assumed to opt out.

Assumptions

The above calculations are based on the assumption that the following percentage of employees will opt into the VEBA:

Age	Service						
	x < 5	5 <= x < 10	10 <= x < 15	15 <= x < 20	20 <= x < 25	25 <= x < 30	30 <= x
< 25	100%	n/a	n/a	n/a	n/a	n/a	n/a
25 - 29	100%	100%	n/a	n/a	n/a	n/a	n/a
30 - 34	100%	100%	100%	n/a	n/a	n/a	n/a
35 - 39	100%	100%	80%	60%	n/a	n/a	n/a
40 - 44	100%	80%	60%	33%	0%	n/a	n/a
45 - 49	100%	67%	33%	0%	0%	0%	n/a
50 - 54	100%	67%	33%	0%	0%	0%	n/a
55 - 59	n/a	n/a	33%	0%	0%	0%	n/a
60 - 64	n/a	n/a	33%	n/a	n/a	n/a	0%
>= 65	n/a	n/a	n/a	n/a	n/a	n/a	n/a

In addition, the results under the GASB valuation basis assume 50% of those who opt out will remain in the City's medical plans and continue to have a liability for the implicit subsidy.

Study results were estimated based on the Cheiron June 30, 2014 actuarial valuation for both funding (explicit subsidy only) and GASB purposes (explicit and implicit subsidy). However, even though the City is not pre-funding the implicit subsidy, it still exists as long as the retiree participates in the City's medical plans whether the member stays in the current plan or opts out for the VEBA. The liability for the implied subsidy will remain with the City and only decrease to the extent that opt outs leave the City plans.

* * *

Jennifer Schembri
July 23, 2015
Page 4



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Bartel'. The signature is written in a cursive style with some loops and flourishes.

John E. Bartel
President

c: Cathy Wandro, Bartel Associates
Marilyn Oliver, Bartel Associates

o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-07-23 po-ff opeb.docx

San Jose Police & Fire Retiree Medical Plan

City Contribution Projections

Projections are based on the 6/30/14 Funding Valuation and do not Include any liability associated with the Implied Subsidy

Projection of City Contributions - Combined Police & Fire (\$millions)

EE % City % UAL Amort. P/F Modify Pay? FYE	Current Plan		3a		3b	
	50% Med/25% Dent		8%		8%	
	50% Med/75% Dent		ARC less EE%		ARC less EE%	
	24/26		30/30		24/26	
	No		Yes		Yes	
	%	\$	%	\$	%	\$
2016	12.32%	\$ 23.9	9.51%	\$ 19.4	10.8%	\$ 21.9
2017	12.32%	24.7	9.09%	20.1	10.3%	22.7
2018	12.32%	25.5	8.70%	20.8	9.8%	23.5
2019	12.32%	26.4	8.73%	21.5	9.9%	24.3
2020	12.32%	27.2	8.76%	22.3	9.9%	25.2
2021	12.32%	28.1	8.79%	23.1	9.9%	26.1
2022	12.32%	29.0	8.84%	24.0	10.0%	27.1
2023	12.32%	29.9	8.88%	24.9	10.0%	28.1
2024	12.32%	30.9	8.93%	25.8	10.1%	29.1
2025	12.32%	31.9	8.98%	26.8	10.1%	30.2
2026	12.32%	33.0	9.02%	27.8	10.2%	31.3
2027	12.32%	34.0	9.05%	28.8	10.2%	32.5
2028	12.32%	35.1	9.09%	29.9	10.2%	33.7
2029	12.32%	36.3	9.13%	31.0	10.3%	34.9
2030	12.32%	37.5	9.16%	32.1	10.3%	36.1
2031	12.32%	38.7	9.19%	33.2	10.3%	37.4
2032	12.32%	39.9	9.21%	34.4	10.4%	38.7
2033	12.32%	41.2	9.24%	35.6	10.4%	40.1
2034	12.32%	42.6	9.27%	36.9	10.4%	41.5
2035	12.32%	44.0	9.30%	38.2	10.4%	43.0
2036	12.32%	45.4	9.33%	39.6	10.5%	44.5
2037	12.32%	46.9	9.35%	41.0	10.5%	46.0
2038	12.32%	48.4	9.36%	42.4	10.5%	47.6
2039	12.32%	50.0	9.38%	43.8	10.5%	49.2
2040	7.06%	29.6	9.39%	45.3	3.9%	18.6
2041	7.06%	30.5	9.40%	46.8	3.9%	19.2
2042	4.06%	18.1	9.41%	48.4	0.0%	-
2043	4.06%	18.7	9.42%	50.0	0.0%	-
2044	4.06%	19.3	9.42%	51.7	0%	-
2045	4.06%	20.0	9.43%	53.4	0%	-
2046	4.06%	20.6	0%	-	0%	-
2047	4.06%	21.3	0%	-	0%	-
2048	4.06%	22.0	0%	-	0%	-
2049	4.06%	22.7	0%	-	0%	-
2050	4.06%	23.4	0%	-	0%	-
Totals		1,096.7		1,019.1		852.5
PV at 3% Int.		686.2		625.5		573.2
PV at 7% Int.		414.6		366.8		366.9



July 23, 2015

Jennifer Schembri
Interim Director
City Manager's Office of Employee Relations
200 E. Santa Clara Street, 3rd Floor Wing
San José, CA 95113-1905

Re: San Jose Police Officers and Fire Fighters Guaranteed Purchasing Power (GPP)

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters Guaranteed Purchasing Power (GPP) agreement. We understand the agreement provides for a GPP benefit in exchange for agreement to eliminate the Supplemental Retirement Benefit Reserve (SRBR). Elimination of the SRBR has already resulted in significant savings. The GPP benefit will provide current and future Tier 1 retirees a guaranteed 75% of purchasing power benefit after retirement. This benefit will be calculated by comparing the ratio of actual pension benefits to what pension benefits would have been had retirees received 100% of Bay Area CPI increases. If that ratio is less than 75% then retirees would receive an additional check equal to the difference.

Analysis

We believe the cost of this benefit will only be significant if inflation returns to high levels. Inflation has generally been less than 3% (Tier 1 Cost of Living Adjustments) over the last 20 years so only retirees who retired several years ago (prior to 1981) would have ratios less than 75%. As of May 2015 there were approximately 56 retirees with an average age of 80.

The estimated liability for this group of earlier retirees is approximately \$2.4 million and because this is an increase for current retirees we think it is possible (if not likely) Cheiron will recommend a shorter (5 year) amortization period. If so then the first year payment will be about \$550,000. However, if they do not recommend a shorter amortization then using 20 years the first year payment will be about \$180,000. Both of these would increase with the aggregate payroll assumption of 3.25%.

Due to time constraints, our analysis did not include a volatility assumption for inflation. While we believe Cheiron will price the GPP for other (current and future) retirees using some volatility assumptions for inflation, we also would generally expect any additional cost to be fairly modest.

Assumptions

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation. Our analysis also assumes Cheiron will price this using stochastic simulations based on a median inflation assumption of 3% or less.

* * *

Jennifer Schembri
July 23, 2015
Page 2



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associates
Marilyn Oliver, Bartel Associates
o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-07-23 po-ff gpp.docx

EXHIBIT 2



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: August 17, 2015

Approved

Date

8/17/15

SUPPLEMENTAL

SUBJECT: ACTIONS RELATED TO THE SETTLEMENT AGREEMENT WITH THE SAN JOSÉ POLICE OFFICERS' ASSOCIATION AND THE SAN JOSÉ FIRE FIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 230

REASON FOR SUPPLEMENTAL

The reason for the supplemental memorandum is to provide additional information based on an addendum to the Alternative Pension Reform Settlement Framework Agreement reached with the San Jose Police Officers' Association (SJPOA) and International Association of Fire Fighters, Local 230 (IAFF, Local 230) on the quo warranto process to implement the Alternative Pension Reform Settlement Framework ("Framework Agreement").

BACKGROUND

The City, the SJPOA and IAFF, Local 230 reached an agreement on the Framework Agreement on July 15, 2015. This agreement provides the framework for a settlement of the outstanding litigation between the parties regarding Measure B. This settlement is contingent on a number of factors, including settlements by other litigants (other bargaining units and retirees). Because the Framework Agreement does not include specific terms for implementation, the parties continued discussing the appropriate implementation path to take while acknowledging that the City is still in global settlement discussions with the Federated bargaining units and retirees' association. Addendum #1 regarding the ballot measure (Attachment A) and Addendum #2 regarding the implementation plan (Attachment B) should be considered addendums to the Alternative Pension Reform Framework Agreement.

ANALYSIS

The agreed upon implementation path utilizes a two-prong approach that includes using the SJPOA quo warranto case to immediately implement the agreed-upon changes to retirement benefits and pursuing a November 2016 ballot measure. It is important to note that the quo warranto process allows the parties to carry out the Alternative Settlement Framework as quickly as practical to begin recruiting and retaining police offers immediately.

Under the agreement, before the quo warranto process is initiated in Court, the POA and IAFF, Local 230 will work collaboratively with the City to develop a Charter amendment ballot measure,

HONORABLE MAYOR AND CITY COUNCIL

August 17, 2015

Subject: Actions Related to the Settlement Agreement with the San José Police Officers' Association and the San José Fire Fighters, International Association of Fire Fighters, Local 230

Page 2

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 to which the parties mutually agree. The ballot measure will go to voters in November 2016. Once the parties mutually agree on language, POA and IAFF agree to endorse the ballot measure. Please refer to Attachment A – Addendum #1 for the agreement.

Once the Federated bargaining units and retirees' association agree to and ratify a global settlement of the remaining Measure B litigation, the implementation process will begin. Each party will request a stay in the Appellate Court regarding the Measure B litigation and unfair practice charges before the California Public Employee Relations Board (which will be stayed until December 31, 2015 subject to quarterly continuation if the quo warranto process is on-going). Using the POA case, the parties will propose a stipulation to stay the implementation of Measure B while the other items in the implementation process are proceeding. Please note that this may require coordination with the Attorney General. The parties will then propose a Stipulated Judgment in the quo warranto case that Measure B should be invalidated; however, the settlement will be non-precedential in any forum and the City will not admit wrongdoing (and the judgment will not include a finding that it negotiated in bad faith). The issue will be whether or not the City should have placed on the ballot the version of the ballot measure adopted by Council in December 2011 or resumed negotiations once it was modified. Please see the Attachment B - Addendum #2 for the detailed Proposed Quo Warranto Implementation Plan.

As part of the addendum agreement, the SJPOA and IAFF, Local 230 will oppose any third party litigation that challenges the invalidation of Measure B, whether by joining the litigation or petitioning an Amicus Brief.

In the event that the Federated bargaining units and retirees' association do not reach agreements to settle litigation with the City or the quo warranto process fails to invalidate Measure B, the parties agreed that the November 2016 ballot measure would implement the Alternative Pension Reform Framework.

The City Administration will continue to update the Council on the implementation process.



Jennifer Schembri
Director of Employee Relations

Attachment A – Addendum #1 to the July 15, 2015 Alternative Pension Reform Settlement Framework

Attachment B – Addendum #2 to the July 15, 2015 Alternative Pension Reform Settlement Framework

For questions, please contact Jennifer Schembri, Director of Employee Relations at (408) 535-8154.

ADDENDUM #1 TO THE JULY 15, 2015 ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

BETWEEN
THE CITY OF SAN JOSE
AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230 (IAFF)

The POA and IAFF, Local 230 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, POA and IAFF shall endorse the ballot measure.

FOR THE CITY:

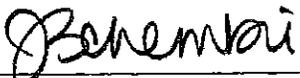
FOR THE UNIONS:



Norberto Dueñas
City Manager
8/14/15
Date



Paul Kelly
President, SJPOA
8/14/15
Date



Jennifer Schembri
Director of Employee Relations
8/14/15
Date



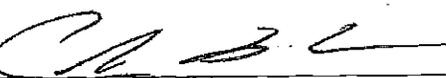
James Gonzalez
Vice President, SJPOA
8/14/15
Date



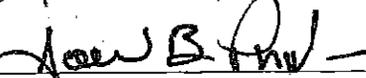
Edgardo Garcia
Assistant Chief of Police
8/14/15
Date



Gregg Adam
SJPOA Counsel
8/14/15
Date



Charles Sakai
Labor Consultant
8/14/15
Date



Joel Phelan
President, IAFF, Local 230
8/14/15
Date

Sean Kaldor
Vice President, IAFF, Local 230
Date

Christopher Platten
Legal Counsel, IAFF, Local 230
Date



Tom Saggau
SJPOA/IAFF, Local 230 Consultant
8.14.15
Date

**ADDENDUM #2 TO JULY 15, 2015 ALTERNATIVE PENSION REFORM SETTLEMENT
FRAMEWORK**

BETWEEN
THE CITY OF SAN JOSE
AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230 (IAFF)

PROPOSED QUO WARRANTO IMPLEMENTATION PLAN, AUGUST 14, 2015

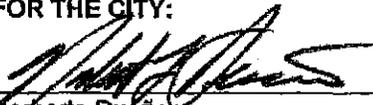
As agreed upon by the City, the San Jose Police Officers' Association and the International Association of Firefighters, Local 230, the proposed quo warranto implementation plan shall be followed by the parties in the manner prescribed below.

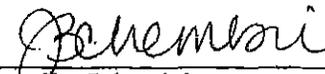
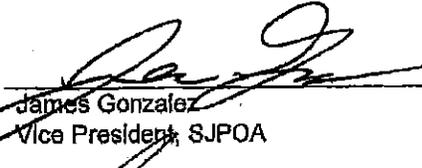
Step	Time	Action
1	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement • 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
2	Immediately after #1	Parties ask for a stay in appellate proceedings (Lucas ruling). Local 230 will also ask for a stay in the PERB proceedings until December 31, 2015. If Step 8 has occurred and the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
3	Immediately after #1	Begin drafting ordinances and Tripartite Retirement MOA. Begin identifying ordinances implemented as a result of Measure B.
4	Immediately after #1	Local 230 intervenes as necessary/indispensable party in POA quo warranto case, without objection from the City, which may require seeking permission from the Attorney General.
5	Immediately after #1	Use POA case to offer a proposed stipulation to the Judge staying the implementation of Measure B pending further proceedings outlined below, which may require coordination with the Attorney General.
6	Immediately after #1	Parties negotiate charter language, pursuant to Addendum #1, simultaneous with agreement on stipulated facts, order and judgment.
7	Simultaneous with #6	Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in quo warranto case Outline of stipulated facts and findings: <ul style="list-style-type: none"> • 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.

		<ul style="list-style-type: none"> • 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
8	Upon completion of #6 and #7	Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
9	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> • Formally adopt ordinances to implement Settlement Framework and replace Measure B. • All parties dismiss/withdraw all complaints, unfair practice charges, etc.
10	January 2016	Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Addendum #1 to Settlement Framework) to be completed by July 2016
11		POA and Local 230 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.
12	Immediately upon: (1) federated unions failing to reach pension settlement; (2) retirees not settling their litigation; or (3) quo warranto process not succeeding in invalidating Measure B.	Craft ballot measure to implement all aspects of Settlement Framework.

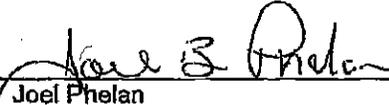
FOR THE CITY:

FOR THE UNION:

 8/17/15  _____
 Norberto Dueñas Date Paul Kelly Date
 City Manager President, SJPOA

 8/17/15  _____
 Jennifer Schembri Date James Gonzalez Date
 Director of Employee Relations Vice President, SJPOA

_____ Date  8-17-15 _____
 Edgardo Garcia Date Gregg Adam Date
 Assistant Chief of Police SJPOA Counsel

_____ Date  8/17/15 _____
 Charles Sakal Date Joel Phelan Date
 Labor Consultant President, IAFF, Local 230

 _____
 Sean Kaldor Date
 Vice President, IAFF, Local 230

_____ Date
 Christopher Platten Date
 Legal Counsel, IAFF, Local 230

 _____
 Tom Saggau Date
 SJPOA/IAFF, Local 230 Consultant

EXHIBIT 3



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: December 4, 2015

Approved

Date

12/4/15

SUBJECT: APPROVAL OF THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT CONCERNING THE LITIGATION ARISING OUT OF MEASURE B WITH BARGAINING UNITS REPRESENTING EMPLOYEES IN THE FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM AND MODIFICATIONS FOR EMPLOYEES IN UNIT 99 AND UNITS 81/82; AND RELATED APPROPRIATION ACTIONS

RECOMMENDATION

(a) Adopt a resolution to:

- (1) Approve the terms of the Federated Alternative Pension Reform Settlement Framework agreement ("Framework") between the City and bargaining units representing employees in the Federated City Employees' Retirement System ("Federated Bargaining Units"):
 - (i) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
 - (ii) Association of Legal Professionals (ALP)
 - (iii) Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)
 - (iv) City Association of Management Personnel, IFPTE Local 21 (CAMP)
 - (v) Confidential Employees' Organization, AFSCME Local 101 (CEO)
 - (vi) International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
 - (vii) Municipal Employees' Federation, AFSCME Local 101 (MEF)
 - (viii) International Union of Operating Engineers, Local No. 3 (OE#3);
- (2) Authorize the City Manager to negotiate and execute a Retirement Memorandum of Agreement between the City and Federated Bargaining Units listed above; and
- (3) Approve the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Federated Alternative Pension Reform Settlement Framework except for those provisions specified herein.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 2 of 18

- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
- (1) Increase the City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,257,000; and
 - (2) Decrease the Retiree Healthcare Solutions Reserve in the amount of \$1,257,000.

OUTCOME

Approval of the terms of the Federated Alternative Pension Reform Settlement Framework agreement, authorization for the City Manager to negotiate and execute the Retirement Memorandum of Agreement between the City and specific bargaining units representing employees in the Federated City Employees' Retirement System; and approval of modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Federated Alternative Pension Reform Settlement Framework except for those provisions specified herein.

BACKGROUND

The City of San Jose is currently in litigation with bargaining units representing employees in the Federated City Employees' Retirement System, as well as the San Jose Police Officers' Association (SJPOA) and the San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230), and a retiree group, over the pension reform ballot measure known as Measure B. Specifically, the American Federation of State, County and Municipal Employees (AFSCME) on behalf of the Municipal Employees' Federation (MEF) and Confidential Employees' Organization (CEO); the International Federation of Professional and Technical Engineers (IFPTE) on behalf of the Association of Engineers and Architects (AEA), the Association of Maintenance Supervisory Personnel (AMSP) and the City Association of Management Personnel (CAMP); and the International Union of Operating Engineers, Local No. 3 (OE#3), are litigants in the Measure B litigation.

Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for 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 this year.

The City and the SJPOA and IAFF, Local 230 reached an agreement on an Alternative Pension Reform Settlement Framework on July 15, 2015, which was approved by City Council in open session on August 25, 2015, after ratification by the SJPOA and IAFF, Local 230 memberships.

In April 2015, settlement discussions with the bargaining units representing employees in the Federated City Employees' Retirement System ("Federated Bargaining Units") commenced. In addition to the litigants, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI); the Association of Legal Professionals (ALP); and the International Brotherhood of Electrical Workers (IBEW), were also engaged in the Measure B settlement discussions, even though these three bargaining units were not parties to the Measure B litigation.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 3 of 18

The City and the Federated Bargaining Units, except for ABMEI, reached an agreed upon settlement on a Federated Alternative Pension Reform Settlement Framework ("Framework" or "Settlement Framework"). The attached Framework presents a path toward the settlement of litigation over Measure B. The settlement framework is subject to a final overall global settlement with all parties related to the Measure B litigation, including retirees.

ABMEI did not agree to the terms of the Settlement Framework and thus the terms described herein do not apply to employees represented by ABMEI. Notwithstanding any action by the Court regarding Measure B, retirement benefits shall remain status quo for employees represented by ABMEI, including but not limited to the current Tier 2 pension benefits and Tier 1 and Tier 2A retiree healthcare. This means that, among other things, for employees represented by ABMEI, current Tier 2 members will not be eligible for the modified benefit of the revised Tier 2; new and former employees represented by ABMEI shall be placed into the current Tier 2 (including retirement age of 65, and a COLA tied to CPI with a 1.5% maximum); the retiree healthcare rates will increase effective December 21, 2015, from 8.76% to 10.47% per a prior agreement with ABMEI, and employees represented by ABMEI are subject to any subsequent increases to retiree healthcare contributions as determined by the Retirement Board; and employees represented by ABMEI in Tier 1 and Tier 2A are not eligible to opt-out of the current retiree healthcare defined benefit plan.

In summary, the Federated Alternative Pension Reform Settlement Framework will:

- Settle significant litigation with AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP) and OE#3 with the Framework's alternative strategy to pension reform. This agreement should avoid further litigation costs with these groups. The Framework will also update the retirement benefits for other employees in the Federated City Employees' Retirement System, including ALP, IBEW and unrepresented employees in Unit 99 and Units 81/82, to be consistent with the terms of the Framework.
- Over the next 30 years, provide savings of approximately \$1.3 billion from the revised Tier 2 compared to Tier 1 (\$940.8 million), the revised retiree healthcare program compared to the current retiree healthcare program (\$249.9 million), and from the elimination of the Supplemental Retiree Benefit Reserve (SRBR) (\$120 million).
- Modify Tier 2 pension benefits for non-sworn employees to levels similar to other Bay Area agencies to attract and retain non-sworn employees, providing a competitive Tier 2 pension benefit at a reduced cost. The new Tier 2 benefit has several differences from the California Public Employees' Retirement System (CalPERS) second tier benefit (the Public Employees' Pension Reform Act, or PEPR) that reduce costs. For example, the annual Cost of Living Adjustment ("COLA") is back-loaded so that the more years of service an employee has, the higher COLA rate they receive, which is a significant difference from the Tier 2 benefit in other agencies and reduces the cost of the Tier 2 benefit. This also incentivizes longevity. This Tier 2 benefit also has a straight 2% accrual rate each year (same as the current Tier 2) and a maximum benefit of 70%.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 4 of 18

- Allow Tier 1 employees who left the City and either subsequently have returned or return in the future to return into the Tier 1 benefit, incentivizing employees who have left to return to City service.
- Preserve 50/50 risk sharing with employees through the cost sharing of a 50/50 split in normal costs and any future unfunded liability associated with the Tier 2 benefit. In other agencies, the cost sharing is just 50/50 of normal cost.
- Close the retiree healthcare and dental defined benefit plan (hereafter collectively referred to as "retiree healthcare") to new and current Tier 2 employees, and allow an opt-out for Tier 1 employees, into a defined contribution Voluntary Employee Beneficiary Association (VEBA) subject to legal and IRS approval. The VEBA has no employer contribution and is completely funded by the employee. Because the VEBA has a lower contribution rate than the existing defined benefit plan, it reduces retiree healthcare costs for Tier 1 employees and increases their take home pay, while reducing the City's liability for retiree healthcare. In addition, while new and current Tier 2 employees will be mandated to make contributions into a VEBA (other than unrepresented Tier 2 employees), this creates a safeguard for these employees to have funds set aside for retiree healthcare. It should be noted that Tier 2 employees represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare plan will have the option to opt-out or stay in the plan, similar to Tier 1 employees. Additionally, new and current Tier 2 employees in Unit 99 and Units 81/82 will not be mandated to make contributions into a VEBA.
- Implement a new lowest cost healthcare plan in order to reduce retiree healthcare costs.
- Allow retirees with alternate healthcare coverage to receive a 25% credit applicable towards future premiums instead of being covered by the City's healthcare in order to reduce costs (similar to "in lieu" programs commonly used for active employees).
- Reinstate the Federated City Employees' Retirement System's previous definition of disability which is comparable to other agencies.
- Create an Independent Medical Panel appointed by the Federated Retirement Board which will determine disability eligibility instead of the Federated Retirement Board. The agreement creates a process and minimum qualifications for the Independent Medical Panel.
- Continue the elimination of the SRBR from the Federated City Employees' Retirement System, solidifying \$4 million a year in General Fund savings.
- Allow for an agreement on a ballot measure in 2016 to include the following issues in the City Charter:
 - Actuarial soundness;
 - Voters' ability to vote on any defined benefit pension enhancements;
 - No retroactive defined benefit pension enhancements;
 - Any other provisions contained in the Framework that the parties may mutually agree to.

HONORABLE MAYOR AND CITY COUNCIL

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 5 of 18

- As previously noted, ABMEI did not agree to the Framework and thus the terms described above do not apply to employees represented by ABMEI. Retirement benefits shall remain status quo for employees represented by ABMEI, including but not limited to the current Tier 2 pension benefits and retiree healthcare.

The below chart depicts the realized savings from Measure B and retirement reform as shown to the Council during the January 20, 2015, Study Session regarding General Fund Structural Budget Deficit History and Service Restoration Priorities and Strategies:

Retirement Reform Estimate	GF Savings
Implemented:	
SRBR Elimination	\$13 M
Retiree Healthcare Changes (lowest cost plan)	\$7 M
New Tier 2 Retirement Plans	\$5 M
<i>Subtotal Implemented</i>	<i>\$25 M</i>

The Settlement Framework preserves these savings, including \$4 million from the continued SRBR elimination for the Federated City Employees' Retirement System (the remaining \$9 million is attributable to the Police and Fire Department Retirement Plan). The exception is the increased cost for the revised Tier 2 benefit. In the first year of the revised Tier 2 Federated pension benefit, the cost is estimated to increase from the current Tier 2 by \$900,000.

The Alternative Pension Reform Settlement Framework has not yet been ratified by the Federated Bargaining Units' respective memberships, but ratification votes will occur before the December 15, 2015, City Council meeting.

ANALYSIS

A complete copy of the Federated Alternative Pension Reform Settlement Framework is attached (Attachment A). The following is *only a summary* of the key provisions of the Framework applicable to employees in the Federated City Employees' Retirement System; however, as previously noted, the terms of the Framework do not apply to employees represented by ABMEI. Additionally, unless specifically noted, the terms below also apply to unrepresented employees in the Federated City Employees' Retirement System.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 6 of 18

**Retirement
Memorandum
of Agreement**

A Retirement Memorandum of Agreement ("Retirement MOA") between the City and bargaining units representing employees in the Federated City Employees' Retirement System will be finalized to memorialize all agreements related to retirement.

The term of the Retirement MOA shall be July 1, 2015 – June 30, 2025.

Revised Tier 2

In order to address recruitment and retention issues, this agreement modestly increases the Tier 2 benefits; however, the City's portion of the Normal Cost will go from 5.74% to an estimated 7.1%, which is still drastically lower than the City's portion of the Normal Cost for Tier 1, which is 17.08%.

Employees hired on or after the effective date of the ordinance implementing these changes will be subject to the following pension benefits. Any current Tier 2 members will be retroactively placed in the revised Tier 2.

Pension Formula Accrual Rate

2.0% per year of service (same as current Tier 2).

Maximum Benefit

The above accrual rate is subject to a maximum of 70% of final compensation.

Final Compensation

Average annual earned pay of the highest three consecutive years of service (same as current Tier 2).

Minimum Service

Tier 2 employees shall be eligible for a service retirement after earning five (5) years of retirement service credit and meeting the age requirement (same as current Tier 2).

Normal Age of Retirement

Employees shall be eligible to retire at age 62 with at least five (5) years of retirement service credit.

Employees will have the ability to retire at age 55 with a 5% reduction per year below age 62, prorated to the closest month.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 7 of 18

Revised Tier 2
(cont'd)

Retiree Cost of Living Adjustment (COLA)

Plan members shall receive a cost of living adjustment of the lower of (1) the increase in the consumer price index, or CPI (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December); or (2) a back-loaded 2.0% COLA as described below:

Service at Retirement	COLA
1-10 years	1.25% per year
11-20 years	1.5% per year
21-25 years	1.75% per year
26 years and above	2.0% per year

The first COLA will be prorated based on the number of months retired.

No Retroactive Pension Increases or Decreases

Any future changes in pension benefits will be on a prospective basis only.

Current Tier 2 Employees

Except for employees who were previously in Tier 1, the employees currently in Tier 2 in the Federated City Employees' Retirement System will be retroactively moved to this revised Tier 2 benefit.

Any costs, including unfunded liabilities associated with moving the current Tier 2 employees into the revised structures, will be shared between the employees and the City on a 50/50 basis with no ramp up and amortized as a separate liability over a minimum of 20 years.

Vesting Language

The City will remove the language currently contained in City Charter Section 1508-A referring to limiting vesting of benefits.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 8 of 18

Revised Tier 2
(cont'd)

Cost Sharing

Employees and the City will share equally in all costs of Tier 2 to the pension plan, including all normal costs and unfunded liabilities (same as current Tier 2).

If an unfunded liability exists for Tier 2 members, employees will contribute based on a "ramp up" to paying 50% of the liability. In years where an unfunded liability exists, the member contribution will be increased by increments of 0.33% per year until such time that the contribution associated with the unfunded liability is shared 50/50. Until such time, the City will pay the balance of the contribution associated with the unfunded liability of the Tier 2 plan.

For example, if the unfunded liability contribution rate of the Federated Tier 2 plan is 2% for three years, the following ramp-up schedule will occur:

Year	Total UAL Rate	City UAL Rate	Employee UAL Rate
1	2.00%	1.67%	.33%
2	2.00%	1.34%	.66%
3	2.00%	1.01%	.99%

Disability Benefits

Plan members eligible for a disability retirement benefit shall receive a monthly allowance benefit equal to 2.0% x Years of Service x Final Compensation, with the following minimum and maximum benefit for those eligible for a service-connected disability retirement benefit and for those eligible for a non-service connected disability retirement benefit.

2.0% x Years of Service x Final Compensation	Minimum	Maximum
Service-connected disability retirement	40%	70%
Non-service connected disability retirement	20%	70%

Survivorship Benefits

The survivorship benefits for Tier 2 shall be the same as the survivorship benefits for Tier 1; however, these benefits will be reduced to reflect the 70% pension benefit maximum.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 9 of 18

Revised Tier 2
(cont'd)

Rehired Employees/New Hires From Outside Agencies

Former City Tier 1 employees who have been rehired since the implementation of the current Federated Tier 2 plans, or rehired after the effective date of this agreement, will return to Tier 1. Any lateral hires that are defined as "Classic" members under the Public Employees' Pension Reform Act (PEPRA), regardless of the tier of their previous employer, will also become Tier 1 members. Employees who are considered "new" employees under PEPRA will enter the revised Tier 2 plan.

The costs associated with the transition of these current Tier 2 employees into Tier 1 will be shared between the employees and the City on a 50/50 basis with no ramp up. This will be a separate liability amortized over 20 years.

Service Credit Purchases

Tier 2 members shall be eligible to make the same service credit purchases as Tier 1, with the exception of purchases of service credit related to suspension. All costs associated with service credit purchases will be paid for by the Tier 2 member.

Tier 2 Costing

The below chart indicates the difference in the current Tier 1 and Tier 2 pension normal cost rates for Fiscal Year 2015-2016 in comparison to the revised Tier 2 estimated normal cost based on calculations by the City's actuary, Bartel Associates. The retirement board's actuary, Cheiron, will be asked to calculate the final contribution rates. Please refer to Attachment B.

Normal Cost	Current Tier 1	Current Tier 2	Agreement Tier 2
Total	23.41%	11.48%	14.2% New T2 / 14.3% Current T2
City	17.08%	5.74%	7.1%
Member	6.33%	5.74%	7.1%

The City's actuary estimates that the savings between the revised Tier 2 benefit and the current Tier 1 normal cost would be \$940.8 million over 30 years.

Retiree
Healthcare

The current retiree healthcare and dental defined benefit program will be closed to new employees and current Tier 2 employees (except as noted below). Tier 1 employees who were rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare, until we can offer rehires the option to opt-out pursuant to section 16 of the Alternative Pension Reform Settlement Framework.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 10 of 18

Retiree
Healthcare
(cont'd)

Voluntary Employee Beneficiary Association (VEBA)

The City will implement a defined contribution retiree healthcare benefit in the form of a VEBA.

New and current Tier 2 members shall contribute 2% of base pay to the VEBA. There will be no City contribution into the VEBA.

Tier 2 employees represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare plan will have the option to opt-out or stay in the plan, similar to Tier 1 employees below.

Unrepresented new and current Tier 2 employees in Unit 99 and Units 81/82 will not be mandated to make contributions into a VEBA.

New Lowest Cost Medical Plan

Effective after the final overall agreement is reached, the Kaiser NCAL 4307 Plan shall be available to all active employees in the Federated City Employee's Retirement System, in addition to the existing plan options for active employees. This new plan will reduce the total premium payment by an estimated \$178 for single coverage and an estimated \$535 for family coverage per month. The Kaiser 4307 Plan has a \$3000 deductible and qualifies for a Health Savings Account (HSA).

The current cost sharing arrangement of the City paying 85% of the lowest cost non-deductible HMO plan will continue for active employees but active employees have the option of selecting the new lowest cost healthcare plan. For retiree healthcare, the retirement plan pays 100% of the lowest cost plan available to active employees. The Kaiser 4307 Plan will be the lowest cost plan available to active employees after implementation.

The lowest cost plan for any future or current retirees will be set so that any plan may not be lower than the "silver" level of health insurance as specified by the current Affordable Care Act as of the date of the agreement "the floor". The "silver" plans are estimated to be 70% of healthcare expenses. During and after the term of the Retirement MOA changes to "the floor" will be by mutual agreement between the City and the bargaining units.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 11 of 18

**Retiree
Healthcare
(cont'd)**

Opt-Out for all Tier 1 members, and for those Tier 2A employees who are represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare and dental plan

Upon compliance with legal and IRS requirements, all Tier 1 employees, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan, will be offered a one-time, irrevocable election to opt-out of the current defined benefit retiree healthcare and dental plan and instead be placed in the VEBA. All Tier 1 employees, and Tier 2A employees represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan will be offered individual, independent financial counseling to assist with their decision.

If legally permissible, deferred vested rehires will also be offered a one-time irrevocable opt-out upon return to City employment.

All Tier 1 members, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan, who choose to opt-out will contribute 4.5% of base pay to the VEBA. All Tier 1 members, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan who elect to remain in the defined benefit plan will contribute 7.5% to the defined benefit plan. The difference between the 4.5% contribution to the VEBA and the 7.5% contribution to the plan will be taxable to the employee.

The City will contribute the amount necessary (when combined with the mandatory employee contributions) to ensure the defined benefit retiree healthcare plan receives the full Annual Required Contribution (ARC). City contributions will be expressed as a percentage of payroll for all bargaining unit members and the City will contribute based on all members (including Tier 2). If the City portion reaches 14% of payroll, the City may decide to contribute a maximum of 14%. In the unlikely event that the City's contribution rate falls below 7.5% during the term of the Retirement MOA the parties will meet to discuss this issue.

Subject to IRS approval, a Tier 1 member, or Tier 2A members represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare and dental plan, who elects to opt-out of the defined benefit retiree healthcare and dental plan, will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare and dental plan, with no interest included. These funds will be placed in the employee's VEBA.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 12 of 18

**Retiree
Healthcare
(cont'd)**

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust very soon after City Council approval. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees who opt-out exceeds the amount of funds in the VEBA, the parties will meet and confer over the opt-out and whether or not it can be implemented through other means for Tier 1 employees who opt-out and Tier 2A and Tier 2C employees. Because Tier 2A and Tier 2C employees are being taken out of the defined benefit retiree healthcare plan now, the goal is to return their retiree healthcare contributions or, if necessary, put these employees back into the defined benefit retiree healthcare plan.

Medicare Part A and B Enrollment

The requirement that a member of the Federated City Employees' Retirement System to enroll in Medicare Part A and B shall continue, and shall be based on federal regulations and insurance provider requirements. The enrollment period for Medicare Parts A and B shall begin 3 months prior to the retiree's 65th birthday and conclude 3 months after the retiree's 65th birthday.

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.

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.

Catastrophic Disability Healthcare Program (CDHP)

VEBA members who receive a service-connected disability will be eligible for 100% of the single premium for the lowest cost healthcare plan until the member is eligible for Medicare (usually age 65). The member must not be eligible for an unreduced service retirement, must exhaust the funds in the VEBA before becoming eligible for the CDHP, and submit an affidavit on an annual basis verifying the member does not have employment that offers healthcare. A member may re-enroll in the CDHP if they lose employment that offers healthcare coverage before Medicare eligibility.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 13 of 18

**Retiree
Healthcare
(cont'd)**

Unrepresented Employees in Unit 99 and Units 81/82

Unrepresented new and Tier 2 employees (including Tier 1 rehires) in Unit 99 and Units 81/82 will not be eligible for the VEBA and thus will not be mandated to make contributions into a VEBA.

Subject to IRS approval, a Tier 2 employee (including Tier 1 rehires) in Unit 99 and Units 81/82 who were previously making contributions into the defined benefit retiree healthcare plan, will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare plan, with no interest included. These funds will be placed in the employee's VEBA.

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees exceeds the amount of funds in the VEBA, it will be determined whether or not it can be implemented through other means.

Retiree Healthcare Costing

The City's actuary estimates that the changes in the lowest cost healthcare and the opt-out will lower the actuarial liability by 16%. The actuary assumed that 50% of those at younger ages with shorter service grading to 0% of those at older ages with longer service currently in the defined benefit plan will opt-out. Please refer to Attachment C.

AAL	Current Valuation	With Kaiser 4307 Plan	Agreement with Opt Out	Total \$ Impact	Total % Impact
Active	\$ 260.6	\$ 229.7	\$ 189.4	\$ (71.2)	(27%)
Inactive	404.4	370.3	370.3	(34.1)	(8%)
Total	664.9	600.0	559.7	(105.2)	(16%)

The City's actuary estimates that, over the next 30 years, the total dollar savings between the existing retiree healthcare plan and the new plan would be approximately \$249.9 million. It is important to note that the actual cost impact will be determined by the retirement board's actuary.

**Disability
Definition
and Process**

The City will reinstate the previous disability retirement definition for all employees in the Federated City Employees' Retirement System.

Disability Process Deadlines

Applications for disability retirement must be filed within one month of separation from City service rather than the previous one year time period. Exceptions contained in the Municipal Code will still apply. The applicants must submit medical paperwork including, but not limited to, the initial nature of the disability and current medical treatments. The medical paperwork must be

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 14 of 18

Disability
Definition
and Process
(cont'd)

filed within one (1) year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances. Applications must not be deferred past four (4) years of the date of the application unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

Disability Hearing Process

The Federated Board will appoint an independent medical review panel of three (3) experts to grant or deny disability retirement applications. The panel will make decisions based on a majority vote. The independent medical review panel may decide, based on its own motion or request from a member, to determine if a disability retirement recipient is capable of returning to work.

The appointment shall be approved by a vote of four (4) of seven (7) trustees.

Each member of the independent medical review panel will serve four year terms and meet the following minimum qualifications:

- I. 10 years of practice after completion of residency.
- II. Currently in practice or retired.
- III. Not a prior or current City employee.
- IV. No prior experience providing the City or retirement boards with medical services. The exception shall be prior service as an independent panel member seeking reappointment.
- V. No prior experience as a qualified medical examiner or agreed medical evaluator.
- VI. Varying types of medical practice experience.

Administrative Law Judge (ALJ)

Decisions to grant or deny a disability retirement made by the independent medical review panel may be appealed to an ALJ. Either the applicant or the City has forty-five (45) days to appeal the decision made by the independent medical review panel. The appeal hearing must happen within ninety (90) days of the notice of appeal, unless a later date is mutually agreed upon. The ALJ decision will be considered final.

Supplement
Retiree Benefit
Reserve (SRBR)

The elimination of the SRBR will continue.

Guaranteed Purchasing Power (GPP)

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all 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.

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 15 of 18

Supplement
Retiree Benefit
Reserve (SRBR)
(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 2016. The number of Tier 1 retirees who currently fall below 75% purchasing power is approximately 68.

The bargaining units representing employees in the Federated City Employees' Retirement System will have a right to tender defense of the litigation to the City in the event of litigation brought forward by a retired member or members of the bargaining units representing employees in the Federated City Employees' Retirement System, against bargaining units representing employees in the Federated City Employees' Retirement System challenging this settlement framework agreement.

SRBR Costing

By continuing the elimination of the SRBR, the City will solidify the \$4 million General Fund savings already achieved by the City as a result of Measure B. Assuming the savings of \$4 million continues annually, using simple arithmetic, the elimination of the SRBR is estimated to result in an approximate savings of \$120 million over 30 years. It should be noted that the calculation of the \$4 million was based on the information available to the City when the SRBR was initially eliminated. Please refer to Attachment D.

Attorneys' Fees

To settle attorneys' fees related to Measure B legal matters, the City shall pay the Federated litigant bargaining units \$1.257 million within thirty (30) days of the settlement framework agreement being approved by City Council.

For IFPTE (AEA, AMSP and CAMP) and OE#3 only, final and binding arbitration is available before a JAMS judge to resolve any additional claims for attorneys' fees related to Measure B litigation (including administrative proceedings) and resolution. AFSCME (MEF and CEO) is not entitled to arbitration for any additional claims for attorneys' fees.

**Quo Warranto/
Ballot Measure
Implementation
Plan**

The Framework contains a quo warranto implementation plan to be followed by the City and the bargaining units representing employees in the Federated City Employees' Retirement System that is similar to the process agreed to with the SJPOA and IAFF, Local 230.

If the quo warranto process described in the Framework succeeds, the bargaining units representing employees in the Federated City Employees' Retirement System agree to work with the City on a 2016 ballot measure that will supersede Measure B and incorporate the following provisions:

HONORABLE MAYOR AND CITY COUNCIL

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 16 of 18

**Quo Warranto/
Ballot Measure
Implementation
Plan (cont'd)**

- (1) A provision requiring voter approval of defined retirement benefit enhancements;
- (2) A provision requiring actuarial soundness;
- (3) A provision prohibiting retroactivity of defined retirement benefit enhancements; and
- (4) Any other provisions contained the Framework that the parties may mutually agree to.

If the quo warranto process is not successful in invalidating Measure B, the parties agree that the Framework will be implemented via a ballot measure in November 2016.

EVALUATION AND FOLLOW-UP

The City and the Federated Retirees' Association are continuing settlement discussions related to litigation arising out of Measure B. The goal of these discussions is to reach a global settlement with all parties to the litigation. The City Administration will continue to keep the Council apprised of any updates related to this matter as proceeding with the quo warranto process is contingent on reaching an agreement with all litigants.

As previously noted, the City and the SJPOA and IAFF, Local 230 reached an agreement on an Alternative Pension Reform Settlement Framework on July 15, 2015, which was approved by City Council in open session on August 25, 2015, after ratification by the SJPOA and IAFF, Local 230 memberships.

Once a decision has been made on the recommended process by which to enact this Settlement Framework agreement, the City Administration will bring it forward to City Council for consideration.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the December 15, 2015, City Council Meeting.

COORDINATION

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

HONORABLE MAYOR AND CITY COUNCIL

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 17 of 18

COST SUMMARY/IMPLICATIONS

Appropriation actions in the amount of \$1.257 million, funded from the Retiree Healthcare Solutions Reserve, are recommended as part of this memorandum to pay attorney's fees related to the settlement of Measure B. Although there is currently a Fiscal Reform Plan Implementation Reserve available that would otherwise be used as a funding source for the \$1.257 million action, the reserve funding level stands at only \$787,000 and will likely be needed to pay for additional attorney fees related to the implementation of the Police and Fire Department and Federated settlement frameworks. The use of the Retiree Healthcare Solutions Reserve is recommended instead to fund this settlement, as the Administration believes there will be sufficient funds remaining in this reserve after this action to provide for any further City retiree healthcare contribution rate funding needs that will be determined at a later date. The cost/savings estimates of each element of the framework are noted above and in the attachments, and it is estimated that, over 30+ years, the City will realize savings of approximately \$1.3 billion from the revised Tier 2 compared to Tier 1 (\$940.8 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$249.9 million), and from the elimination of the SRBR (\$120 million). With the exception of the SRBR, it is important to note that these estimates were done by the City's actuary and actual costs/savings will be determined by the Retirement Board's actuary.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the actions recommended as part of this memorandum.

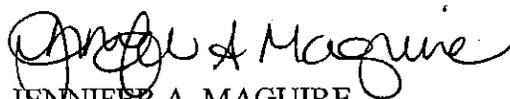
Fund #	Appn #	Appn. Name	Total Appn	2015-2016 Estimated Costs	2015-2016 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	3258	Measure B Settlement	\$1,500,000	\$1,257,000	N/A	8/25/15, 29609
001	8411	Retiree Healthcare Solutions Reserve	\$6,195,000	(\$1,257,000)	IX-58	6/23/15, 29589

CEQA

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



JENNIFER SCHEMBRI
Director of Employee Relations



JENNIFER A. MAGUIRE
Senior Deputy City Manager/
Budget Director

HONORABLE MAYOR AND CITY COUNCIL

December 4, 2015

Subject: Approval of Terms of an Agreement with bargaining units representing employees in the Federated City Employees' Retirement System and modifications for employees in Unit 99 and Units 81/82

Page 18 of 18

Attachment A – Federated Alternative Pension Reform Settlement Framework Agreement

Attachment B – Letter from John Bartel dated December 3, 2015 on Tier 2 Costing

Attachment C – Letter from John Bartel dated December 3, 2015 on Retiree Healthcare Costing

Attachment D – Letter from John Bartel dated December 3, 2015 on Guaranteed Purchasing Power

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

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. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, 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. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, 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 PEPRRA, 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 PEPRRA 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: <ul style="list-style-type: none"> • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement

		<ul style="list-style-type: none"> • 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	<p>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 SPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only).</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> • 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.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

Page 18 of 20

		<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

Page 19 of 20

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.

[Signature] 11/23/15
[Signature]
JEM 11/23/15
CJS 11/23/15

MB 11/23/15
JHT 11/23/15
JWJ 11/23/15
yae 11/23/15
[Signature] 11-23-15

Mano Murado
for JS 11/23/15

VMM 11/23/15
LC 11/23/15
[Signature] 12/4/15

JFC 12-3-15
VHT 12-3-15
OV 12/4/15



December 3, 2015

Jennifer Schembri
 Director of Employee Relations
 City Manager's Office
 200 E. Santa Clara Street, 3rd Floor Wing
 San José, CA 95113-1905

Re: San Jose Federated Tier 2 Pension Benefit

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Federated Tier 2 pension benefit agreement. We understand the agreement will redefine Tier 2 pension benefits as:

- Benefit formula: 2% per year of City service, maximum 70% of final average salary
- Final average salary: final three years base pay
- Normal retirement age 62
- Reduced retirement age 55, with 5% reduction for each year retirement precedes age 62
- Provide the following ancillary benefits:
 - 5 year vesting
 - Cost of Living Adjustments equal to the lessor of CPI and the following based on years of service at retirement:

Years of City Service at Retirement	COLA
1-10	1.25%
11-20	1.50%
21-25	1.75%
26+	2.00%

Current Tier 2 employees as of agreement date will receive the lessor of a 1.5% COLA or CPI for 1-10 years of City service at retirement.

- Automatic 50% survivor benefit
- Disability benefit:
 - Service-connected – 2% x Years of Service x Final Average Salary, with a minimum of 40% and a maximum of 70% of Final Average Salary
 - Non Service-connected – 2% x Years of Service x Final Average Salary, with a minimum of 20% and a maximum of 70% of Final Average Salary

Analysis

The following table shows the estimated impact on the Tier 2 Normal Cost:

Normal Cost	Current Tier 1	Current Tier 2	Agreement Tier 2
Total	23.41%	11.48%	14.2% New T2 / 14.3% Current T2
City	17.08%	5.74%	7.1%
Member	6.33%	5.74%	7.1%



These normal cost results used the current Cheiron Tier 2 retirement rates from the June 30, 2014 valuation. Because the Agreement Tier 2 benefit reduces the normal retirement age from 65 to 62, we believe Cheiron may adjust the Tier 2 retirement rates to reflect the lower normal retirement age. We estimate this could increase the Agreement Tier 2 total normal cost by approximately 0.4%.

The following table projects out City normal cost under the current Tier 2 benefit formula, assuming Tier 2 benefits were the same as Tier 1, and under the agreed to Tier 2 benefit formula over the next 30 years (note all projections are based on the current Cheiron Tier 2 retirement rates):

**City of San Jose
 Federated
 Projection of City Normal Cost of Agreed To Pension Tier 2 Benefit Formula
 (\$ millions)**

FYE	Tier 2 Benefit Unchanged 11.48% Tier 2 NC		Tier 2 Benefit Restored to Tier 1 Level 23.41% Tier 2 NC		Tier 2 Benefit as Bargained 14.2% Tier 2 NC (14.3% Current Tier 2)	
	Total City Cost		Total City Cost		Total City Cost	
	% of Pay	\$	% of Pay	\$	% of Pay	\$
2017	5.74%	4.0	17.08%	11.8	7.1%	4.9
2018	5.74%	4.8	17.08%	14.4	7.1%	6.0
2019	5.74%	5.7	17.08%	17.1	7.1%	7.1
2020	5.74%	6.7	17.08%	19.9	7.1%	8.3
2021	5.74%	7.7	17.08%	23.0	7.1%	9.6
2022	5.74%	8.8	17.08%	26.2	7.1%	10.9
2023	5.74%	9.8	17.08%	29.2	7.1%	12.2
2024	5.74%	10.7	17.08%	31.9	7.1%	13.3
2025	5.74%	11.6	17.08%	34.6	7.1%	14.4
2026	5.74%	12.5	17.08%	37.2	7.1%	15.5
2027	5.74%	13.4	17.08%	39.9	7.1%	16.7
2028	5.74%	14.4	17.08%	42.8	7.1%	17.8
2029	5.74%	15.3	17.08%	45.6	7.1%	19.0
2030	5.74%	16.4	17.08%	48.8	7.1%	20.3
2031	5.74%	17.5	17.08%	52.0	7.1%	21.7
2032	5.74%	18.6	17.08%	55.4	7.1%	23.1
2033	5.74%	19.8	17.08%	58.8	7.1%	24.5
2034	5.74%	20.8	17.08%	61.9	7.1%	25.8
2035	5.74%	21.7	17.08%	64.7	7.1%	27.0
2036	5.74%	22.7	17.08%	67.4	7.1%	28.1
2037	5.74%	23.6	17.08%	70.1	7.1%	29.2
2038	5.74%	24.5	17.08%	73.0	7.1%	30.4
2039	5.74%	25.6	17.08%	76.1	7.1%	31.7
2040	5.74%	26.6	17.08%	79.1	7.1%	33.0
2041	5.74%	27.5	17.08%	81.9	7.1%	34.1
2042	5.74%	28.5	17.08%	84.7	7.1%	35.3
2043	5.74%	29.4	17.08%	87.5	7.1%	36.5
2044	5.74%	30.3	17.08%	90.3	7.1%	37.6
2045	5.74%	31.3	17.08%	93.0	7.1%	38.8
2046	5.74%	32.2	17.08%	95.7	7.1%	39.9
Totals		542.4		1,613.7		672.9

Jennifer Schembri
December 3, 2015
Page 3



The agreement also provides that Tier 2 members will pay 50% of the unfunded liability contribution. Even though there is a ramp up feature to this cost sharing we believe, if unfunded liabilities do materialize this will be a cost savings feature for the City.

Assumptions

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation.

* * *

To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associates

o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-12-03 letter federated t2.docx



December 3, 2015

Jennifer Schembri
Director of Employee Relations
City Manager's Office
200 E. Santa Clara Street, 3rd Floor Wing
San José, CA 95113-1905

Re: San Jose Federated Retiree Healthcare Agreement

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Federated retiree healthcare (medical and dental) agreement. We understand the agreement will:

- Establish a VEBA
 - New hires and current Tier 2 employees (except Tier 2A represented by OE#3) will participate in the VEBA only and will not be eligible for current plan benefits.
 - Current Tier 1 and Tier 2A represented by OE#3 retiree healthcare participants would be given the option to "opt-out" of the current plan and join the VEBA. This, in conjunction with closing the plan to new hires and most current Tier 2 employees will effectively mean the current benefit will wear away over time.
 - Historical employee contributions to the current plan would be transferred for anyone opting out of the current plan.
- Contributions:
 - City will contribute the full ARC, less member contributions, to the current plan based on total pensionable pay regardless of whether an individual participates in the current plan or the VEBA. (Note the City, per the agreement, may cap its contribution at 14% of total pensionable pay.)
 - City will not contribute to the VEBA.
 - Members remaining in the current plan will contribute 7.5% of their pensionable pay.
 - Members participating in the VEBA will not contribute to the current plan.
- All retirees, whether participating in the current plan or the VEBA would be allowed to participate in the City's medical plans, however retirees participating in the VEBA would only be eligible for unsubsidized premiums.
- Adoption of the Kaiser NCAL 4307 medical plan for actives and retirees.
- Add an "in lieu" feature to the current plan that would allow retirees to receive a credit for 25% of the lowest cost medical and dental plan as a credit toward future healthcare premiums, in lieu of receiving healthcare coverage.
- Agreement is contingent on cost analysis determining that funding will be adequate for the current plan and a review of the legal/tax issues.



Analysis – Funding Valuation Basis

The following table shows the estimated impact of the retiree healthcare agreement on the Actuarial Liability under the Funding Valuation basis which uses a 7% discount rate and includes both the explicit and implicit subsidy (millions):

AAL	Current Valuation	With Kaiser 4307 Plan	Agreement with Opt Out	Total \$ Impact	Total % Impact
Active	\$ 260.6	\$ 229.7	\$ 189.4	\$ (71.2)	(27%)
Inactive	404.4	370.3	370.3	(34.1)	(8%)
Total	664.9	600.0	559.7	(105.2)	(16%)

The following table shows the estimated impact of the retiree healthcare agreement on the Annual Required Contribution (ARC) under the Funding Valuation basis. The current valuation's Unfunded Actuarial Liability (UAL) amortization period is 30 year, level dollar. The agreement ARC uses a UAL amortization period of 25 years, level dollar.

ARC	Based on Payroll	Current Valuation	Agreement with Opt Out	% of Total Payroll Impact
Normal Cost	Eligible Payroll	6.01%	5.02%	(2.43%)
UAL Amortization	Total Payroll	16.07%	13.81%	(2.26%)
Total ARC	Total Payroll	21.12%	16.43%	(4.69%)

The following table shows the estimated impact of the retiree healthcare agreement on the City and member contribution rates under the Funding Valuation basis. Under the agreement, members remaining in the retiree healthcare plan will contribute 7.5% of pensionable payroll. The City will contribute the remaining portion of the ARC (although the City may cap its contribution at 14% of total pensionable payroll). The member and City contributions shown are based on different payrolls, with the member contributions based on the payroll for members remaining in the retiree healthcare plan but the City contribution based on total payroll.

Contributions	Based on Payroll	Current Valuation	Agreement with Opt Out	% of Total Payroll Impact
Member	Eligible Payroll	10.47%	7.50%	(4.89%)
City	Total Payroll	12.32%	12.52%	0.20%
Total¹	Total Payroll	21.12%	16.43%	(4.69%)

We are also attaching a table that projects City contributions for 30 years under the current plan and the retiree healthcare agreement.

¹ The agreement requires member contribution rate be applied only to pensionable pay for those remaining in the current plan while the City contribution rate would be applied to total pensionable pay. Since the member and City rates apply to different pensionable pay for both the current plan and the agreement, the total percentages were calculated based on total pensionable pay, including those ineligible or assumed to opt out.



The following table shows the impact of the agreement on FY 2015/16 dollar contributions, with City contributions equal to the ARC less the member contributions, and amounts rounded to the nearest \$100,000:

	Current	Agreement with Opt Out	Savings
Normal Cost	\$ 12,200,000	\$ 6,300,000	\$ 5,900,000
UAL Amortization	38,800,000	33,300,000	5,500,000
Total ARC	51,000,000	39,600,000	11,400,000
Member	21,200,000	9,400,000	11,800,000
Net City	29,800,000	30,200,000	(400,000)

Assumptions

The above calculations are based on the assumption that the following percentage of employees will opt into the VEBA:

Age	Service						
	< 5	5-9	10-14	15-19	20-24	25-29	≥ 30
< 25	100%	n/a	n/a	n/a	n/a	n/a	n/a
25-29	100%	100%	n/a	n/a	n/a	n/a	n/a
30-34	100%	90%	70%	35%	n/a	n/a	n/a
35-39	100%	85%	60%	30%	15%	n/a	n/a
40-44	100%	75%	50%	25%	0%	0%	n/a
45-49	100%	60%	25%	0%	0%	0%	0%
40-54	100%	50%	0%	0%	0%	0%	0%
55-59	100%	50%	0%	0%	0%	0%	0%
60-64	100%	50%	0%	0%	0%	0%	0%
≥ 65	100%	67%	33%	0%	0%	0%	0%

Participant data does not include member contributions before October 2012. Employees that opt out of the cash portion of the current plan would be entitled to receive their historical member contributions. We estimated the amount of member contributions for those hired before October 2012 by increasing member contributions in the participant data as follows:

- 0% for those hired on or after October 2012
- 50% for those hired from October 2002 through September 2012
- 100% for those hired from October 1992 through September 2002
- 150% for those hired before October 1992

Because members who opt out and remain in the City's medical plans at retirement will only be eligible for unsubsidized premiums, there will be no remaining retiree healthcare liability for them with the City.

Study results were estimated based on the Cheiron June 30, 2014 actuarial valuation for funding purposes and include both the implicit and explicit subsidy for those remaining in the plan.

* * *

Jennifer Schembri
December 3, 2015
Page 4



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associates

o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-12-03 letter federated opeb.docx

411 Borel Avenue, Suite 101 • San Mateo, California 94402
main: 650/377-1600 • *fax:* 650/345-8057 • *web:* www.bartel-associates.com.

**San Jose Federated Retiree Healthcare Plan
 Projection of City Contributions
 Based on the 6/30/14 Funding Valuation
 (\$ millions)**

Member % City % UAL Amort.	Current Plan		Retiree Healthcare Agreement	
	50% Medical/27% Dental 50% Medical/73% Dental Varies by UAL Base		7.5% of Remaining Payroll ARC less Member % 25-year closed amortization period	
FYE	% of Pay	\$	% of Pay	\$
2017	12.37%	30.7	12.22%	30.3
2018	12.28%	31.3	11.94%	30.5
2019	12.14%	31.9	11.66%	30.6
2020	12.00%	32.4	11.39%	30.8
2021	11.82%	32.8	11.14%	30.9
2022	11.71%	33.5	10.89%	31.1
2023	11.58%	34.0	10.65%	31.3
2024	11.41%	34.5	10.39%	31.4
2025	11.22%	34.9	10.14%	31.5
2026	11.02%	35.2	9.90%	31.6
2027	10.82%	35.6	9.66%	31.7
2028	10.62%	35.9	9.42%	31.9
2029	10.41%	36.2	9.20%	32.0
2030	10.20%	36.5	8.98%	32.1
2031	10.00%	36.8	8.77%	32.3
2032	7.39%	28.0	8.57%	32.4
2033	7.95%	30.9	8.37%	32.6
2034	12.76%	51.1	8.17%	32.7
2035	15.06%	62.0	7.96%	32.8
2036	15.42%	65.3	7.76%	32.9
2037	15.05%	65.6	7.56%	32.9
2038	14.70%	65.8	7.37%	33.0
2039	14.35%	66.1	7.18%	33.1
2040	14.00%	66.3	7.00%	33.2
2041	0.12%	0.6	0.00%	-
2042	0.09%	0.5	0.00%	-
2043	0.08%	0.4	0.00%	-
2044	0.06%	0.3	0.00%	-
2045	0.05%	0.3	0.00%	-
2046	0.04%	0.2	0.00%	-
Totals		1,015.6		765.7



December 3, 2015

Jennifer Schembri
Director of Employee Relations
City Manager's Office
200 E. Santa Clara Street, 3rd Floor Wing
San José, CA 95113-1905

Re: San Jose Federated Guaranteed Purchasing Power (GPP)

Dear Ms. Schembri:

This letter provides our analysis of the Federated Guaranteed Purchasing Power (GPP) agreement. We understand the agreement provides for a GPP benefit in exchange for agreement to eliminate the Supplemental Retirement Benefit Reserve (SRBR). Elimination of the SRBR has already resulted in significant savings. The GPP benefit will provide current and future Tier 1 retirees a guaranteed 75% of purchasing power benefit after retirement. This benefit will be calculated by comparing the ratio of actual pension benefits to what pension benefits would have been had retirees received 100% of Bay Area CPI increases. If that ratio is less than 75% then retirees would receive an additional check equal to the difference.

Analysis

We believe the cost of this benefit will only be significant if inflation returns to high levels. Inflation has generally been less than 3% (Tier 1 Cost of Living Adjustments) over the last 20 years so only retirees who retired several years ago (prior to 1981) would have ratios less than 75%. As of May 2015 there were approximately 68 retirees with an average age of 88.

We estimate the liability for this group of earlier retirees would not be more than \$750 thousand and because this is an increase for current retirees we think it is possible (if not likely) Cheiron will recommend a shorter (5 year) amortization period. If so then the first year payment will not be more than \$180 thousand. However, if they do not recommend a shorter amortization then using 20 years the first year payment will not be more than \$60,000. Both of these amortization payments would increase with the aggregate payroll assumption of 2.85%.

Our analysis did not include a volatility assumption for inflation. While we believe Cheiron will price the GPP for other (current and future) retirees using some volatility assumptions for inflation, we also would generally expect any additional cost to be fairly modest.

Assumptions

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation. Our analysis also assumes Cheiron will price this using stochastic simulations based on a median inflation assumption of 3% or less.

* * *

Jennifer Schembri
December 3, 2015
Page 2



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associate

o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-12-03 letter federated gpp.docx

EXHIBIT 4

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

**THE SAN JOSE POLICE OFFICERS' ASSOCIATION
and
THE SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230**

The City of San Jose ("City") and the San Jose Police Officers' Association ("POA") and the San Jose Fire Fighters, IAFF Local 230 ("IAFF") agree to the following. The parties agree that they have met and conferred in good faith, and that this agreement fulfills the City's *Seal Beach* bargaining obligations related to this ballot measure and fulfills the terms of Addendum#1 to the July 15, 2015, Alternative Pension Reform Settlement Framework.

- (A) The parties agree to the following ballot measure language to be placed on the November 2016 ballot:**

Pension Modification

The Citizens of the City of San Jose do hereby add the following sections to Article XV of the Charter, superseding Article XV-A. These sections shall prevail over conflicting or inconsistent provisions in Charter Article XV. Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

1. Reservation of Voter Authority

- a. *There shall be no enhancements to defined benefit pension benefits and/or defined benefit retiree healthcare benefits in effect as of January 1, 2017, without voter approval. An enhancement is any change to a defined benefit pension benefit and/or defined benefit retiree healthcare benefit that increases the total aggregate cost of the benefit in terms of normal cost and unfunded liability as determined by the Board's actuary. This does not include other changes which do not directly modify specific pension benefits, such as any subsequent pay increases which may increase an employee's final compensation or any assumption changes as determined by the Board.*

Side Letter Agreement – Ballot Measure Language (Federated Bargaining Units)

March 8, 2016

Page 2 of 4

- b. *If the State Legislature or the voters of the State of California enact a requirement of voter approval for the continuation of defined pension benefits, the voters of the City of San Jose hereby approve the continuation of current pension benefits for employees.*

(1) By passage of this Measure, the voters hereby approve and authorize the continuation of the following benefits:

- i. For Tier 1 employees in the Federated City Employees' Retirement System as defined by the Municipal Code, including but not limited to, the normal age of retirement shall be 55, with an accrual rate of 2.5% per year to a maximum of 75% of the final compensation, and the Cost-of-Living-Adjustment shall be 3.0% per year.*
- ii. For Tier 1 employees in the Police & Fire Department Retirement Plan as defined by the Municipal Code, including but not limited to, the normal age of retirement shall be age 50 with twenty-five years of service or age 55 with twenty years of service, with a maximum benefit of 90% of final compensation, and the Cost-of-Living-Adjustment shall be 3.0% per year.*
- iii. For Tier 2 employees in the Federated City Employees' Retirement System who were originally hired into City service on or after September 30, 2012, as further defined by the Municipal Code, including but not limited to, the normal age of retirement shall be 62, with an accrual rate of 2.0% per year to a maximum of 70% of the final compensation, and the Cost-of-Living-Adjustment shall be based on years of service and CPI, but no greater than 2.0% at maximum years of service.*
- iv. For Tier 2 employees in the Police & Fire Department Retirement Plan who were originally hired into City service as a sworn Police employee on or after August 4, 2013, or who were originally hired into City service as a sworn Fire employee on or after January 2, 2015, as further defined by the Municipal Code, including but not limited to, the normal age of retirement shall be 57 with an accrual rate that shall be based on years of service and shall range from at least 2.4% per year of service to no greater than 3.4% at the maximum years of service, with a maximum pension benefit of 80% of the final compensation, and the Cost-of-Living-Adjustment shall be based on CPI, but no greater than 2.0% per year.*

2. Actuarial Soundness (for both pension and retiree healthcare plans)

- a. *In recognition of the interests of the taxpayers and the responsibilities to the plan beneficiaries, all pension and retiree healthcare plans shall be operated in conformance with Article XVI, Section 17 of the California Constitution. This includes but is not limited to:*

(1) All plans and their trustees shall assure prompt delivery of benefits and related services to participants and their beneficiaries;

Side Letter Agreement – Ballot Measure Language (Federated Bargaining Units)

March 8, 2016

Page 3 of 4

- (2) *All plans shall be subject to an annual actuarial analysis that is publicly disclosed in order to assure the plan has sufficient assets;*
- (3) *All plan trustees shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;*
- (4) *All plan trustees shall diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is not prudent to do so;*
- (5) *Determine contribution rates on a stated contribution policy, developed by the retirement system boards; and*
- (6) *When investing the assets of the plans, the objective of all plan trustees shall be to maximize the rate of return without undue risk of loss while having proper regard to the funding objectives of the plans and the volatility of the plans' contributions as a percentage of payroll.*

3. No Retroactive Defined Benefit Pension and Defined Benefit Retiree Healthcare Enhancements

- a. *Any enhancement to a member's retirement formula or retirement benefit or retiree healthcare benefit adopted on or after January 1, 2017, shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.*
- b. *If a change to a member's retirement membership classification or a change in employment results in an enhancement in the retirement formula or retirement benefit or retiree healthcare benefit applicable to that member, except as otherwise provided under the plans as of [effective date of ordinance], that enhancement shall apply only to service performed on or after the operative date of the change and shall not be applied to any service performed prior to the operative date of the change.*
- c. *For purposes of this section, "operative date" would be the date that any resolution or ordinance implementing the enhancement to a member's retirement formula or retirement benefit adopted by the City Council becomes effective.*

Side Letter Agreement – Ballot Measure Language (Federated Bargaining Units)

March 8, 2016

Page 4 of 4

(B) In the event no agreement on ballot measure language is reached with the bargaining units representing employees in the Federated City Employees' Retirement System, the parties agree that this ballot measure language shall be placed on the November 2016 ballot for employees in the Police and Fire Department Retirement Plan.

(C) The POA and IAFF agree to endorse the November 2016 ballot measure.

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

For Employer:

Norberto Dueñas Date
City Manager

Jennifer Schembri 3/8/16
Jennifer Schembri Date
Director of Employee Relations

Charles Sakai 3/8/16
Charles Sakai Date
Labor Consultant

For the Unions:

Paul Kelly 3/8/16
Paul Kelly Date
President, POA

Sean Kaldor 3/8/16
Sean Kaldor Date
President, IAFF

James Gonzalez 3/8/16
James Gonzalez Date
Vice President, POA

Christopher Platten Date
Legal Counsel, IAFF

Gregg Adam 3/8/16
Gregg Adam Date
Legal Counsel, POA