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7  
8 Attorneys for [Proposed] Intervenors, Steven Haug and Silicon Valley Taxpayers Association, a  
California non-profit corporation.  
9

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SANTA CLARA**

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

15 *Plaintiff,*

16 v.

17 CITY OF SAN JOSE, and CITY COUNCIL OF  
SAN JOSE,

18 *Defendants.*

CASE NO. 113-CV-245503

**SUPPLEMENTAL REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
APPLICATION FOR INTERVENTION**

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

19 Proposed Intervenors, Peter Constant, Steven Haug and the Silicon Valley Taxpayer's  
20 Association, respectfully request that the Court take Judicial Notice of the following official  
21 government records pursuant to Evidence Code § 452, as follows:

22 A. "PERB PROPOSED DECISIONS ISSUED 7/1/2014 to 6/30/2015", available online  
23 to the general public at the Public Employment Relations Board website at: [http://www.perb.ca.  
24 gov/aljreports/ALJ\\_635717693084080991.pdf](http://www.perb.ca.gov/aljreports/ALJ_635717693084080991.pdf). The list of Proposed Decisions includes the  
25 following information relevant to this action:

- 26
  - 27 ■ In PERB Case No. SF-CE-00969-M, IAFF LOCAL 230 v. CITY OF SAN JOSE EJC,  
28 Exceptions were filed 2/3/2015;

1           ▪ In PERB Case No. SF-CE-00996-M, IFPTE, *LOCAL 21, AFL-CIO v. CITY OF SAN*  
2           *JOSE EJC* Exceptions were filed 2/3/2015.

3           This document is judicially noticeable as an official record of the Public Employment  
4 Relations Board, pursuant to Evidence Code § 452, subdiv. (c). It is directly relevant to intervention  
5 for the reasons set forth in the Replies filed in support of the Application for Intervention

6           B.       “[PROPOSED] WRIT IN QUO WARRANTO”, is judicially noticeable as an official  
7 record of the City of San Jose, pursuant to Evidence Code § 452, subdiv. (c). This document is posted  
8 online by the City of San Jose, and available to the general public at the City of San Jose website at:  
9 <http://www.sanjoseca.gov/DocumentCenter/View/55005>. Although the City of San Jose website  
10 provides that the document is dated March 2, 2016, the City’s signature on the document is dated  
11 March 8, 2016. This document is directly relevant to intervention for the reasons set forth in the  
12 Replies filed in support of the Application for Intervention.

13           C.       “STIPULATED FACTS AND PROPOSED FINDINGS, JUDGMENT AND  
14 ORDER”, is judicially noticeable as an official record of the City of San Jose, pursuant to Evidence  
15 Code § 452, subdiv. (c). This document is posted online by the City of San Jose, and available to the  
16 general public at the City of San Jose website at: [http://](http://www.sanjoseca.gov/DocumentCenter/View/55001)  
17 [www.sanjoseca.gov/DocumentCenter/View/55001](http://www.sanjoseca.gov/DocumentCenter/View/55001). Although the City of San Jose website provides  
18 that the document is dated March 2, 2016, the City’s signature on the document is dated March 8,  
19 2016. This document is directly relevant to intervention for the reasons set forth in the Replies filed  
20 in support of the Application for Intervention.

21           D.       “[PROPOSED] STIPULATED JUDGMENT AND ORDER”, is judicially noticeable  
22 as an official record of the City of San Jose, pursuant to Evidence Code § 452, subdiv. (c). This  
23 document is posted online by the City of San Jose, and available to the general public at the City of  
24 San Jose website at: <http://www.sanjoseca.gov/DocumentCenter/View/55004>. This document is  
25 directly relevant to intervention for the reasons set forth in the Replies filed in support of the  
26 Application for Intervention.

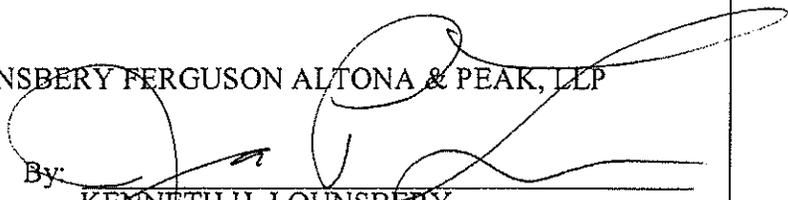
27           E.       “DEFENDANTS CITY OF SAN JOSE'S AND CITY COUNCIL OF SAN JOSE'S  
28 ANSWER TO VERIFIED COMPLAINT IN QUO WARRANTO (CODE CIV.PROC. § 803; CAL.

1 CODE REG. TITLE 11, SECTION 2(A))”, filed in the above captioned action on June 28, 2013. This  
2 document is a record of this Court, judicially noticeable pursuant to Evidence Code § 452, subdiv.  
3 (d). This document is directly relevant to intervention for the reasons set forth in the Replies filed in  
4 support of the Application for Intervention.

5 F. “CITY OF SAN JOSE, CITY COUNCIL AGENDA, March 8, 2016 SYNOPSIS” is  
6 judicially noticeable as an official record of the City of San Jose, pursuant to Evidence Code § 452,  
7 subdiv. (c). This document is posted online by the City of San Jose, and available to the general  
8 public at the City of San Jose website at: <<http://www.sanjoseca.gov/index.aspx?nid=4535>>,  
9 Government, “Council Agendas 2016.” This document is directly relevant to intervention for the  
10 reasons set forth in the Replies filed in support of the Application for Intervention.

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DATED: *March 28, 2016* LOUNSBERY FERGUSON ALTONA & PEAK, LLP

By:   
KENNETH H. LOUNSBERY  
JAMES P. LOUGH  
ALENA SHAMOS  
YANA L. RIDGE  
Attorneys for Intervenors, STEVEN HAUG  
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ASSOCIATION

# **EXHIBIT A**

## PROPOSED DECISIONS ISSUED

7/1/2014 to 6/30/2015

<u>Case Number</u>	<u>Case Name</u>	<u>Staff</u>	<u>Date Issued</u>	<u>Exceptions Due</u>	<u>Date Final</u>	<u>Decision Number</u>	<u>Exceptions Filed</u>
SA-CE-00014-C	SEIU LOCAL 521 v. FRESNO COUNTY SUPERIOR COURT	SPC	7/25/2014	9/15/2014			9/8/2014
SA-CE-00829-M	STATIONARY ENGINEERS, LOCAL 39, PLACER PUBLIC EMPLOYEES ORGANIZATION v. COUNTY OF PLACER	REW	7/30/2014	8/25/2014	8/27/2014	HO-U-1141M	
SF-CE-00804-M	SANTA CLARA COUNTY CORRECTIONAL PEACE OFFICERS' ASSN. v. COUNTY OF SANTA CLARA	SPC	8/4/2014	8/29/2014			9/17/2014
LA-CE-05770-E	ROBIN ROBINSON v. LOS ANGELES UNIFIED SCHOOL DISTRICT	VPR	8/11/2014	9/5/2014			8/29/2014
SF-CE-00669-M	SAN MATEO COUNTY FIREFIGHTERS LOCAL 2400 v. MENLO PARK FIRE PROTECTION DIST	SPC	8/13/2014	9/8/2014	9/9/2014	HOU1142M	
LA-CE-05357-E	RIO HONDO COLLEGE FACULTY ASSN. v. RIO HONDO CCD	SPC	8/22/2014	9/16/2014	9/17/2014	HO-U-1143E	
SF-CE-00874-M	SAN MATEO COUNTY FIREFIGHTERS, IAFF LOCAL 2400 v. MENLO PARK FIRE PROTECTION DIST	DNG	8/22/2014	9/16/2014	9/17/2014	HO-U-1144M	
LA-CE-05806-E	MANHATTAN BEACH UNIFIED TEACHERS ASSN, CTAYNEA v. MANHATTAN BEACH UNIFIED SCHOOL DISTRICT	KM	8/29/2014	9/23/2014	9/24/2014	HO-U-1147E	
LA-CE-01181-H	ACADEMIC PROFESSIONALS OF CALIFORNIA v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY	EJC	8/29/2014	9/23/2014	9/24/2014	HO-U-1146H	
LA-CO-01606-E	CARLOS E. PEREZ v. LOS ANGELES COLLEGE FACULTY GUILD, LOCAL 1521	AAC	8/29/2014	9/23/2014	9/24/2014	HO-U-1145E	
LA-CE-05779-E	CARMEN FRITSCH-GARCIA v. LOS ANGELES UNIFIED SCHOOL DISTRICT	VPR	9/9/2014	11/17/2014			11/17/2014
LA-CE-05857-E	CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION v. MONTEBELLO UNIFIED SCHOOL DISTRICT	KM	9/25/2014	10/20/2014	10/21/2014	HO-U-1149E	
SF-UM-00730-H	REGENTS OF THE UNIVERSITY OF CALIFORNIA and UNIVERSITY COUNCIL- AFT	YJP	10/6/2014	10/31/2014			11/14/2014
LA-CE-05813-E	CHULA VISTA EDUCATORS v. CHULA VISTA ELEMENTARY SCHOOL DISTRICT	KM	10/20/2014	11/14/2014	11/18/2014	HO-U-1152E	
SA-CE-00782-M	SEIU LOCAL 521 v. COUNTY OF TULARE	REW	10/31/2014	11/25/2014			11/25/2014
LA-CE-00871-M	TEAMSTERS, LOCAL 542 v. CITY OF EL CENTRO	KM	10/31/2014	11/25/2014	11/26/2014	HOU1154M	
SF-CE-00969-M	IAFF LOCAL 230 v. CITY OF SAN JOSE	EJC	11/7/2014	12/2/2014			2/3/2015

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7/1/2014 to 6/30/2015

<u>Case Number</u>	<u>Case Name</u>	<u>Staff</u>	<u>Date Issued</u>	<u>Exceptions Due</u>	<u>Date Final</u>	<u>Decision Number</u>	<u>Exceptions Filed</u>
SF-CE-00996-M	IFPTE, LOCAL 21, AFL-CIO v. CITY OF SAN JOSE	EJC	11/7/2014	12/2/2014			2/3/2015
SF-CE-00971-H	COALITION OF UNIVERSITY EMPLOYEES-TEAMSTERS LOCAL 2010 v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (SAN FRANCISCO)	SPC	11/13/2014	12/8/2014		HOU1157H	
LA-CE-05663-E	LORI CHAMBERS v. COMPTON USD	SPC	11/17/2014	12/12/2014	12/15/2014	HO-U-1155E	
LA-CE-00618-M	ESCONDIDO CITY EMPLOYEES ASSOCIATION v. CITY OF ESCONDIDO	SPC	11/17/2014	12/12/2014			12/11/2014
LA-CE-05717-E	LYNETTE LUCAS v. RIO SCHOOL DISTRICT	EJC	11/20/2014	12/15/2014			1/22/2015
SA-CE-00857-M	UNITED PUBLIC EMPLOYEES, LOCAL 1 v. COUNTY OF SACRAMENTO	REW	11/21/2014	11/16/2014			12/10/2014
LA-CE-00787-M	SEIU LOCAL 721 v. COUNTY OF RIVERSIDE	VPR	11/25/2014	12/22/2014			1/16/2015
SF-CE-00899-M	NATIONAL UNION OF HEALTHCARE WORKERS v. SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM	SPC	11/25/2014	12/22/2014	3/5/2015	HO-U-1159M	
SF-CE-03036-E	UNITED TEACHERS OF SANTA CLARA v. SANTA CLARA USD	AAC	11/26/2014	12/22/2014	12/29/2014	HO-U-1156E	
LA-CE-01147-H	PATIENT & PHYSICIAN SAFETY ASSOCIATION v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (IRVINE)	SPC	12/8/2014	1/2/2015			12/19/2014
SA-CE-00833-M	DAVIS PROFESSIONAL FIREFIGHTERS ASSN, LOCAL 3494 v. CITY OF DAVIS	CAB	12/18/2014	1/12/2014			1/23/2015
LA-CE-05824-E	UNITED TEACHERS - LOS ANGELES v. LOS ANGELES UNIFIED SCHOOL DISTRICT	EJC	12/24/2014	1/19/2015			2/17/2015
SA-CE-00823-M	SAN JOAQUIN CO CORRECTIONAL OFFICERS ASSN v. COUNTY OF SAN JOAQUIN	CAB	12/31/2014	1/26/2015			1/21/2015
LA-CE-00906-M	UNION OF AMERICAN PHYSICIANS & DENTISTS v. COUNTY OF SANTA BARBARA	SPC	1/26/2015	2/20/2015	2/24/2015	HO-U-1158M	
SA-CE-00650-M	SEIU LOCAL 521 v. COUNTY OF MADERA	CAB	1/27/2015	2/23/2015			4/17/2015
SF-CE-00855-M	SEIU LOCAL 1021 v. CITY OF SAN RAMON	SPC	1/28/2015	2/23/2015			3/20/2015
LA-CE-05811-E	et. al DAVE LUKKARILA v. CLAREMONT UNIFIED SCHOOL DISTRICT	KM	1/28/2015	2/23/2015			2/23/2015

## PROPOSED DECISIONS ISSUED

7/1/2014 to 6/30/2015

<u>Case Number</u>	<u>Case Name</u>	<u>Staff</u>	<u>Date Issued</u>	<u>Exceptions Due</u>	<u>Date Final</u>	<u>Decision Number</u>	<u>Exceptions Filed</u>
LA-CE-00818-M	SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521 v. COUNTY OF KERN	VPR	1/30/2015	2/24/2015			3/6/2015
SF-SV-00120-M	CITY OF VALLEJO and PUBLIC EMPLOYEES UNION LOCAL 1 and IBEW, LOCAL 2376	KMN	2/5/2015	3/2/2015	3/4/2015	HO-R-188-M	
LA-UM-00867-E	POWAY UNIFIED SCHOOL DISTRICT and POWAY SCHOOL EMPLOYEES ASSOCIATION	YJP	2/13/2015	3/10/2015			3/9/2015
LA-CE-01206-H	CALIFORNIA STATE UNIVERSITY EMPLOYEES UNION v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (SAN MARCOS)	KM	2/19/2015	3/16/2015			3/11/2015
LA-RR-01215-E	BAKERSFIELD CITY SCHOOL DISTRICT and LABORERS LOCAL 220, AFL-CIO	EJC	2/23/2015	3/20/2015	3/24/2015	H-OR-189-E	
LA-CE-00856-M	ORANGE COUNTY WATER DISTRICT EMPLOYEES ASSOCIATION v. ORANGE COUNTY WATER DISTRICT	VPR	2/27/2015	4/28/2015			4/23/2015
LA-CE-00849-M	ASSOCIATION OF CONFIDENTIAL EMPLOYEES v. METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA	EJC	3/4/2015	3/30/2015	4/2/2015	HO-U-1160M	
SA-CE-02708-E	TURLOCK TEACHERS ASSOCIATION v. TURLOCK USD	REW	3/11/2015	4/6/2015			4/6/2015
LA-CE-01211-H	CALIFORNIA STATE UNIVERSITY EMPLOYEES UNION v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (SAN DIEGO)	EJC	3/16/2015	4/10/2015	4/14/2015	HO-U-1161H	
LA-CE-00896-M	SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521 v. COUNTY OF KERN	SPC	3/17/2015	5/5/2015	5/7/2015	HO-U-1165M	
SF-CE-00043-C	SEIU LOCAL 1021 v. SAN FRANCISCO COUNTY SUPERIOR COURT	DNG	3/23/2015	4/17/2015	4/21/2015	HO-U-1163C	
LA-CE-01216-H	STATE EMPLOYEES TRADES COUNCIL-UNITED v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (SAN DIEGO)	KM	3/25/2015	4/20/2015	4/21/2015	HO-U-1162H	
SA-CE-02647-E et. al	CSEA-CHAPTER 745 v. NATOMAS UNIFIED SCHOOL DISTRICT	CAB	3/26/2015	4/20/2015	4/22/2015	HO-U-1164E	
LA-CE-05863-E	UNITED TEACHERS LOS ANGELES v. LOS ANGELES UNIFIED SCHOOL DISTRICT	EJC	3/27/2015	4/21/2015			4/21/2015
SF-DP-00311-H	REGENTS OF THE UNIVERSITY OF CALIFORNIA and STATE EMPLOYEES TRADES COUNCIL-UNITED and IUOE LOCAL 501	JWE	4/13/2015	5/8/2015	5/11/2015	HO-R-190H	
SF-CE-01168-M	NAPA CITY EMPLOYEES ASSN. , SEIU LOCAL 1021 v. CITY OF NAPA	AAC	4/15/2015	5/11/2015			
LA-CE-00867-M	LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 777 v. COUNTY OF RIVERSIDE (ECONOMIC DEVELOPMENT AGENCY)	EJC	4/17/2015	5/12/2015	5/14/2015	HO-U-1166M	

**PROPOSED DECISIONS ISSUED**

7/1/2014 to 6/30/2015

<u>Case Number</u>	<u>Case Name</u>	<u>Staff</u>	<u>Date Issued</u>	<u>Exceptions Due</u>	<u>Date Final</u>	<u>Decision Number</u>	<u>Exceptions Filed</u>
LA-CO-01559-E	ASAD ABRAHAMIAN v. COACHELLA VALLEY TEACHERS ASSOCIATION	AAC	4/22/2015	5/18/2015			5/26/2015
LA-CE-05789-E	ANTHONY G. VASEK v. MOUNT SAN JACINTO COMMUNITY COLLEGE DISTRICT	VPR	4/23/2015	5/18/2015	5/20/2015	HO-U-1168E	
SA-CE-00024-C	et. al SISKIYOU COUNTY EMPLOYEES' ASSN v. SISKIYOU COUNTY SUPERIOR COURT	REW	4/23/2015	5/18/2015	5/20/2015	HO-U-1167C	
LA-CE-00904-M	MONTEBELLO CITY EMPLOYEES ASSOCIATION v. CITY OF MONTEBELLO	KM	4/24/2015	5/19/2015			5/18/2015
SA-CO-00119-H	et. al ANDREA E. PACKHAM v. UPTÉ-CWA LOCAL 9119	SPC	4/24/2015	5/19/2015	5/21/2015	HO-U-1169H	
LA-CE-05912-E	BELLFLOWER TEACHERS ASSOCIATION v. BELLFLOWER UNIFIED SCHOOL DISTRICT	EJC	4/27/2015	5/22/2015	5/22/2015	HOU-1170-E	
SF-CE-00900-M	et. al AFSCME LOCAL 101 v. CITY OF SAN JOSE	DNG	5/6/2015	6/1/2015			
SA-CE-02732-E	SEIU LOCAL 1021 v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT	REW	5/6/2015	6/1/2015			5/26/2015
LA-UM-00801-E	BURBANK UNIFIED SCHOOL DISTRICT and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 674	MW	5/11/2015	6/5/2015	6/8/2015	HO-R-191	
SA-UM-00822-E	LODI UNIFIED SCHOOL DISTRICT and LODI PUPIL PERSONNEL ASSN.	RRP	5/12/2015	6/8/2015	6/9/2015	HO-R-192	
SF-CE-03061-E	CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION v. COTATI-ROHNERT PARK USD	DNG	5/12/2015	6/8/2015		H-OU-1171	
LA-CE-05715-E	CATHERINE LILY BASTUG v. SANTA BARBARA USD	SPC	5/15/2015	6/9/2015	6/10/2015	HO-U-1173E	
LA-CE-05734-E	CALVIN ATKINS v. LOS ANGELES UNIFIED SCHOOL DISTRICT	EJC	5/15/2015	6/9/2015	6/10/2015	HO-U-1172E	
SA-CE-00768-M	SEIU LOCAL 521 v. COUNTY OF FRESNO	SPC	5/28/2015	6/23/2015			
SF-CE-01035-H	AFSCME LOCAL 3299 v. REGENTS OF THE UNIVERSITY OF CALIFORNIA	KM	5/29/2015	6/23/2015			6/23/2015
SA-CE-00832-M	SEIU LOCAL 1021 v. COUNTY OF CALAVERAS	CAB	6/9/2015	7/6/2015			
LA-CE-05741-E	AMERICAN FEDERATION OF STATE COUNTY MUNICIPAL EMPLOYEES, LOCAL 3112 v. ANAHEIM UNION HIGH SCHOOL DISTRICT	VPR	6/12/2015	7/7/2015			6/30/2015

## PROPOSED DECISIONS ISSUED

7/1/2014 to 6/30/2015

<u>Case Number</u>	<u>Case Name</u>	<u>Staff</u>	<u>Date Issued</u>	<u>Exceptions Due</u>	<u>Date Final</u>	<u>Decision Number</u>	<u>Exceptions Filed</u>
LA-CE-00934-M	et. al IUOE LOCAL 501 v. COUNTY OF ORANGE	SPC	6/16/2015	7/13/2015			
LA-CE-00889-M	CIVIL ATTORNEYS ASSOCIATION OF SANTA BARBARA, ET AL. v. COUNTY OF SANTA BARBARA	EJC	6/18/2015	7/13/2015			
SF-CE-02864-E	FOOTHILL-DE ANZA FACULTY ASSN. v. FOOTHILL-DE ANZA CCD	SPC	6/22/2015	6/17/2015			
LA-CE-05784-E	CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 32 v. BELLFLOWER UNIFIED SCHOOL DISTRICT	VPR	6/22/2015	7/17/2015			
SF-CE-01218-M	NAPA INDEPENDENT CITY EMPLOYEES v. CITY OF NAPA	DNG	6/25/2015	7/25/2015			
LA-CO-01630-E	DAVE LUKKARILA v. CLAREMONT FACULTY ASSOCIATION	SPC	6/29/2015	7/24/2015			

Total Decisions Issued: 74

# **EXHIBIT B**

1 Gregg McLean Adam, Bar No. 203436

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3 Jennifer S. Stoughton, Bar No. 238309

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Attorneys for Relator-Plaintiff

7 San Jose Police Officers' Association

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10  
11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA *ex rel.* SAN JOSE POLICE  
OFFICERS' ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, and CITY COUNCIL  
16 OF SAN JOSE,

17 Defendants.

Case No. 1-13-CV-245503

**[PROPOSED] WRIT IN *QUO WARRANTO***

18  
19 **To the City of San José and City Council of San José (“City”), Defendants:**

20 WHEREAS, Plaintiff San José Police Officers' Association (“SJPOA”) filed a Verified  
21 Complaint in *Quo Warranto* (“Complaint”) against Defendants City of San José and City Council  
22 of San José (“City”) (collectively, “the Parties”) on April 29, 2013, alleging various defects in  
23 bargaining over the pension reform ballot measure (Resolution No. 76158) that subsequently  
24 became known as Measure B;

25 WHEREAS, the parties subsequently engaged in extensive settlement negotiations and  
26 entered into the attached Stipulated Facts and Proposed Findings, Judgment and Order which  
27 concluded that the continued modification of the proposed ballot language after impasse created a  
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1 further obligation to meet and confer before placing Measure B on the ballot and that the City's  
2 failure to do so is deemed to be a procedural defect significant enough to declare null and void  
3 Resolution 76158, which placed Measure B on ballot.

4 WHEREAS, the Court, having considered the Stipulated Facts and Proposed Findings,  
5 Judgment and Order, and the other papers and pleadings filed, under the authority vested in the  
6 judiciary via California Code of Civil Procedure section 803 has determined that Resolution  
7 76158, which placed Measure B on the ballot, was null and void due to a procedural defect in  
8 bargaining.

9 **THEREFORE, YOU ARE HEREBY COMMANDED**, upon receipt of this Writ in *Quo*  
10 *Warranto*, to take all necessary steps to comply with the attached Stipulated Facts and Proposed  
11 Findings, Judgment and Order, and declare Resolution 76158 null and void due to a procedural  
12 defect.

13 **YOU ARE FURTHER COMMANDED** to declare that Measure B was not properly  
14 placed before the electorate and it and all of its provisions amending the City of San Jose Charter  
15 are therefore invalid and are stricken. Subsequent ordinances amending the Municipal Code to  
16 conform with Measure B shall be replaced.

17 Dated: \_\_\_\_\_, 2016

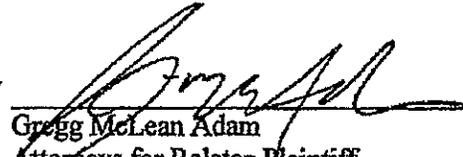
18  
19 By \_\_\_\_\_  
20 Hon. \_\_\_\_\_  
21 Judge of the Superior Court  
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APPROVED AS TO FORM

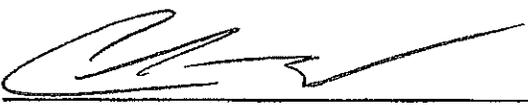
Dated: March 2, 2016

MESSING ADAM & JASMINE LLP

By   
Gregg McLean Adam  
Attorneys for Relator-Plaintiff  
San Jose Police Officers' Association

Dated: March 8, 2016

CITY OF SAN JOSE and CITY COUNCIL  
OF SAN JOSE

By   
Charles Sakai  
Attorneys for City of San Jose

Dated: March 2, 2016

ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA

By   
Marc J. Nolan  
Deputy Attorney General

# EXHIBIT C

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6 CITY OF SAN JOSÉ and  
CITY COUNCIL OF SAN JOSÉ

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

10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA ex rel. SAN JOSÉ POLICE  
OFFICERS' ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSÉ and CITY COUNCIL  
15 OF SAN JOSÉ,

16 Defendants.

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

STIPULATED FACTS AND PROPOSED  
FINDINGS, JUDGMENT AND ORDER

Complaint Filed: April 29, 2013

Trial Date: None Set

17 **STIPULATION**

18 These Stipulated Facts and Proposed Findings, Judgment and Order are entered into by and  
19 between Plaintiff San José Police Officers' Association ("SJPOA"), on the one hand, and the City of San  
20 José ("City"), on the other hand (collectively, the "Parties"), with respect to allegations and claims in  
21 SJPOA's Verified Complaint in *Quo Warranto* ("Complaint"). The Parties have engaged in extensive  
22 settlement negotiations and have reached agreement on the following stipulated facts and Order.  
23

24 WHEREAS, the Parties recognize the overriding public interest in expedited resolution of these  
25 quo warranto proceedings and implementation of the Settlement Framework approved by the San José  
26 City Council on August 25, 2015 to restore and improve City services and sustainability of retirement  
27 plans.  
28

1           WHEREAS, the parties have reached this Stipulation in order to: (1) conserve resources; and (2)  
2 address the costs, time, and risks of continued litigation, both in this forum and in others; and (3) resolve  
3 between these parties the question of whether a decision in this matter would be universally applicable  
4 with respect to the requirements of the ballot measure known as “Measure B,” as applied to bargaining  
5 units and employees outside of SJPOA should SJPOA’s quo warranto proceedings succeed in  
6 invalidating Measure B based on the bargaining history that took place between the City and SJPOA.

7           WHEREAS, the Parties make this agreement in the interest of identifying a collaborative  
8 solution which addresses the financial challenges facing the City with respect to funding retirement  
9 obligations, as well as a mutual desire on the part of employees, retirees and City to make such benefits  
10 sustainable.

11           IT IS THEREFORE STIPULATED AND AGREED by and between the Parties to the above-  
12 referenced action, through their respective attorneys of record, that the following be adopted as the  
13 findings and Order of this Court.

14  
15  
16 Stipulated Facts

17           1.       On June 3, 2011, SJPOA and the City entered into a tentative agreement entitled “Side  
18 Letter Agreement Between the City of San José and San José Police Officers’ Association – Retirement  
19 Reform.”

20           2.       On June 9, 2011, George Beattie, then-President of SJPOA, and Robert Sapien, then-  
21 President of the International Association of Firefighters, Local 230 (“IAFF”) wrote to Alex Gurza,  
22 then-Director of Employee Relations for the City, requesting to commence joint bargaining over  
23 retirement reform.

24           3.       On June 20, 2011, the Parties entered into a Pledge of Cooperation and Agreement Upon  
25 a Framework for Retirement Reform and Related Ballot Measure Negotiations (“Pledge and  
26 Agreement”). The Pledge and Agreement essentially provided a set of ground rules for the Parties to  
27 negotiate concurrently on the issues of retirement reform and related ballot measure(s). In addition to  
28 SJPOA and the City, IAFF was a signatory to the Pledge and Agreement and negotiations occurred

1 between the City and both of those public safety Unions at the same table. A true and correct copy of  
2 the Pledge and Agreement is attached hereto as **Exhibit 1**.

3 4. During the period spanning June 20, 2011 through October 28, 2011, SJPOA, IAFF and  
4 the City met and conferred over retirement reform issues and/or related ballot measures on June 20, July  
5 13, August 1, August 20, August 31, September 13, September 15, October 4, October 12, October 14,  
6 October 20, October 24, and October 28, 2011.

7 5. SJPOA and IAFF issued a joint Retirement Reform Proposal on September 27, 2011.

8 6. During the period spanning June 20, 2011 through October 28, 2011, the CITY proposed  
9 five (5) separate draft ballot measures to SJPOA and IAFF, which were provided on July 6, September  
10 9, October 5, October 20, and October 27, 2011, respectively.

11 7. On October 31, 2011, having not reached an agreement on retirement reform and/or  
12 related ballot measures, the Parties reached impasse pursuant to the terms of the Pledge and Agreement.

13 8. On November 11, 2011, SJPOA and IAFF issued a revised SJPOA/Fire Fighter  
14 retirement reform proposal.

15 9. Pursuant to the terms of the Pledge and Agreement, which provided that the Parties  
16 would proceed to impasse procedures if unable to reach agreement by October 31, 2011, SJPOA, IAFF  
17 and the City participated in joint mediation sessions on November 15 and 16, 2011 before Mediator Paul  
18 Roose of the California State Mediation and Conciliation Service.

19 10. At the conclusion of the November 15 and 16 mediation sessions, the Parties still had not  
20 reached agreement on retirement reform and/or related ballot measures.

21 11. On November 18, 2011, SJPOA and IAFF issued new proposals significantly amending  
22 their prior proposals. The Unions asked to resume bargaining based on their revised proposals.

23 12. Following SJPOA and IAFF's revised retirement reform proposal, the City issued a sixth  
24 draft ballot measure proposal on November 22, 2011, which it provided to SJPOA and IAFF, informing  
25 those bargaining units that the revised ballot measure would be presented to City Council for  
26 consideration and possible adoption at the December 6, 2011 Council meeting. The November 22 ballot  
27 measure made significant revisions from prior versions.  
28

1           13.     On December 1, 2011, SJPOA and IAFF sent the City another revised proposal and asked  
2 to meet and confer about it.

3           14.     On December 5, 2011, the City issued a seventh draft ballot measure, which was  
4 presented to City Council for consideration and possible adoption at the December 6, 2011 Council  
5 meeting. While the December 5 ballot measure was publically available before the December 6, 2011  
6 City Council meeting, it was not provided to SJPOA and IAFF as part of the bargaining process. The  
7 December 5 version of the ballot measure made additional concessions as compared to the November  
8 22 version.

9           15.     On December 6, 2011, the City Council adopted Resolution No. 76087, which approved  
10 the City's last proposed ballot measure (i.e., December 5 version) for placement on the June 2012 ballot.

11           16.     On December 13, 2011, SJPOA and IAFF wrote to the City asking to resume  
12 negotiations or in the alternative engaging in further mediation.

13           17.     Thereafter, SJPOA, IAFF and the City participated in a second joint mediation, before  
14 mediator Douglas Collins, on January 17, January 18, February 6, and February 10, 2012, in an effort to  
15 reach agreement on retirement reform and/or related ballot measures prior to the proposed ballot  
16 measure previously adopted by the City Council being placed before the voters.

17           18.     At the conclusion of the January 18 through February 10 mediation sessions, the Parties  
18 still had not reached agreement on retirement reform and/or related ballot measures.

19           19.     On February 21, 2012, the City proposed an eighth draft ballot measure to SJPOA and  
20 IAFF, and informed those bargaining units that the revised ballot measure would be presented to the  
21 City Council for consideration and possible adoption at the Council meeting scheduled for March 6,  
22 2012. If approved, the revised ballot measure would replace the version previously adopted by the City  
23 Council on December 6, 2012.

24           20.     On February 24, 2012, the SJPOA requested to bargain about the February 21, 2012  
25 ballot measure. The City responded to the SJPOA's letter on February 27, 2012, but the City and Unions  
26 did not engage in further negotiations.  
27  
28

1           21.     On March 3, 2012, SJPOA and IAFF issued a further revised SJPOA/Fire Fighter  
2 retirement reform proposal.

3           22.     On March 5, 2012, the City responded to SJPOA and IAFF's March 3 proposal via letter,  
4 but the parties did not engage in further negotiations.

5           23.     On March 6, 2012, the San José City Council adopted Resolution No. 76158, which  
6 repealed Resolution No. 76087, and instead approved the February 21, 2012 proposed ballot measure for  
7 placement on the June 5, 2012 ballot.

8           24.     On June 5, 2012, that ballot measure, which had become known as Measure B, was  
9 passed by the voters.  
10

11 Stipulated Findings

12           1.     The California Supreme Court has held that a charter city (such as the City of San José)  
13 must comply with the meet and confer requirements of the Meyers-Milias-Brown Act ("MMBA") –  
14 which govern relations between local public agency employers and local public employee organizations  
15 – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.  
16

17           2.     It is clear from the Parties' submissions and recitations of the relevant facts that the  
18 Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-  
19 upon impasse on October 31, 2011.

20           3.     The MMBA's "duty to bargain requires the public agency to refrain from making  
21 unilateral changes in employees' wages and working conditions until the employer and employee  
22 association have bargained to impasse .... " If an impasse exists, however, it may be broken, and the  
23 duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be  
24 futile.

25           4.     In this case, the issue is whether impasse existed and, if it did, whether it had been broken  
26 by post-impasse ballot changes made by the City and whether the City Council should have negotiated  
27 further with SJPOA prior to placing the matter before the voters.  
28

1 Stipulated Conclusions

2 1. Here, both Parties met and conferred in good faith before reaching an agreed-upon  
3 impasse on October 31, 2011.

4 2. However, continued modification of the proposed ballot language after impasse –  
5 including concessions made by the City – created a further obligation to meet and confer before placing  
6 Measure B on the ballot.

7 3. The City’s failure to do so is deemed to be a procedural defect significant enough to  
8 declare null and void Resolution 76158, which placed Measure B on ballot.  
9

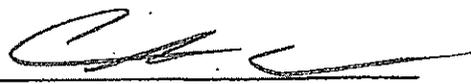
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13 [Proposed] Stipulated Judgment and Order

14 In light of the Stipulated Facts, Findings and Conclusions set forth above, and pursuant to the  
15 Parties’ desire to settle and resolve the disputes between them through the terms of this Stipulation, the  
16 Parties respectfully submit the attached Proposed Stipulated Judgment and Order (**Exhibit A**), which is  
17 incorporated herein.  
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Dated: March 2, 2016

RENNE SLOAN HOLTZMAN SAKAI LLP

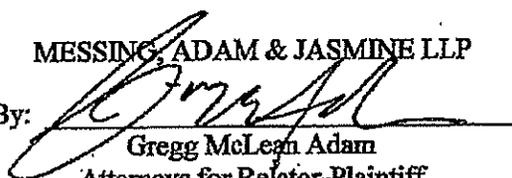
By: 

Charles D. Sakai  
Steven P. Shaw

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CITY OF SAN JOSÉ and  
CITY COUNCIL OF SAN JOSÉ

Dated: March 2, 2016

MESSING, ADAM & JASMINE LLP

By: 

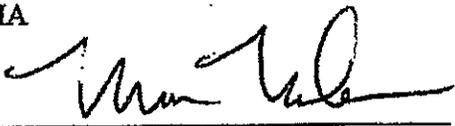
Gregg McLean Adam

Attorneys for Relator-Plaintiff  
SAN JOSE POLICE OFFICERS' ASSOCIATION

APPROVED AS TO FORM:

Dated: March 2, 2016

ATTORNEY GENERAL FOR THE STATE OF  
CALIFORNIA

By: 

Marc J. Nolan  
Deputy Attorney General

RENNE SLOAN HOLTZMAN SAKAI LLP  
Attorneys at Law

# EXHIBT 1

# 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 11<sup>th</sup> 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.

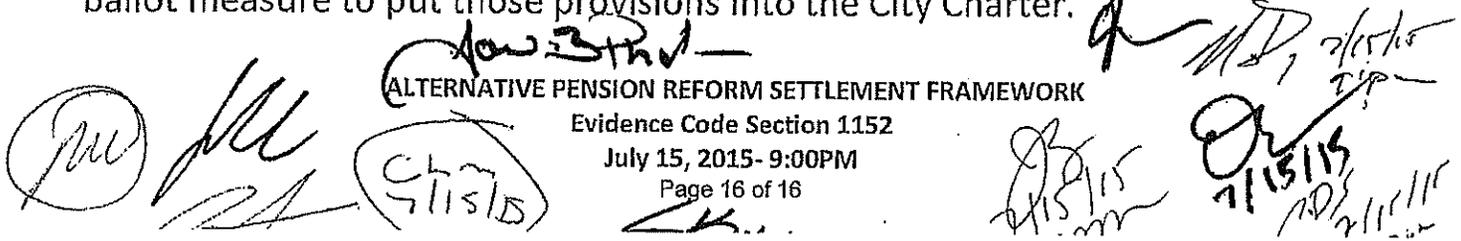
### **Attorney's Fees**

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 4<sup>th</sup>, 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.


 A collection of handwritten signatures and initials in black ink, including a large signature on the left, a signature in the middle, and several initials on the right.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

July 15, 2015 - 9:00PM

Page 16 of 16

# EXHIBIT A

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5 Attorneys for Defendants  
6 CITY OF SAN JOSÉ and  
CITY COUNCIL OF SAN JOSÉ

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SANTA CLARA  
9

10 THE PEOPLE OF THE STATE OF  
CALIFORNIA ex rel. SAN JOSÉ POLICE  
11 OFFICERS' ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSÉ and CITY COUNCIL  
15 OF SAN JOSÉ,

16 Defendants.  
17

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

[PROPOSED] STIPULATED JUDGMENT AND  
ORDER

Complaint Filed: April 29, 2013

Trial Date: None Set

18 In this action, Plaintiff San José Police Officers' Association ("SJPOA") filed a Verified  
19 Complaint in *Quo Warranto* against Defendants City of San José and City Council of San José ("City")  
20 (collectively, "the Parties") on April 29, 2013, alleging various defects in bargaining over the pension  
21 reform ballot measure (Resolution No. 76158) that subsequently became known as Measure B. The  
22 Court has been advised that, after extensive negotiations, the Parties have reached a Settlement  
23 Framework and Agreement of this action and related proceedings, and has received Stipulated Facts and  
24 Proposed Findings executed by the Parties, pursuant to the Settlement Framework and Agreement. The  
25 Court, having considered the Stipulated Facts and Proposed Findings and the other papers and pleadings  
26 filed, and good cause existing therefor, hereby issues the following as its Stipulated Judgment and Order  
27 herein.  
28

1  
2 Factual Findings of the Court

3           1.     The California Supreme Court has held that a charter city (such as the City of San José)  
4 must comply with the meet and confer requirements of the Meyers-Milias-Brown Act (“MMBA”) –  
5 which govern relations between local public agency employers and local public employee organizations  
6 – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.

7           2.     It is clear from the Parties' submissions and recitations of the relevant facts that the  
8 Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-  
9 upon impasse on October 31, 2011.

10           3.     The MMBA's "duty to bargain requires the public agency to refrain from making  
11 unilateral changes in employees' wages and working conditions until the employer and employee  
12 association have bargained to impasse .... " If an impasse exists, however, it may be broken, and the  
13 duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be  
14 futile.

15           4.     In this case, the issue is whether impasse existed and, if so, whether it had been broken by  
16 post-impasse ballot changes made by the City and whether the City Council should have negotiated  
17 further with SJPOA prior to placing the matter before the voters.

18  
19  
20 Conclusions

21           1.     Here, both Parties met and conferred in good faith before reaching an agreed-upon  
22 impasse on October 31, 2011.

23           2.     However, continued modification of the proposed ballot language after impasse –  
24 including concessions made by the City – created a further obligation to meet and confer before placing  
25 Measure B on the ballot.

26           3.     The City’s failure to do so is deemed to be a procedural defect significant enough to  
27 declare null and void Resolution 76158, which placed Measure B on ballot.  
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Based on the foregoing, IT IS ORDERED that Resolution 76158, which placed Measure B on ballot, is null and void due to a procedural defect in bargaining.

IT IS FURTHER ORDERED that Measure B was not properly placed before the electorate and it and all of its provisions are therefore invalid.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Beth A.R. McGowen  
Judge of the Santa Clara County Superior Court

# **EXHIBIT D**

1 CHARLES D. SAKAI (SBN 173726)  
STEVEN P. SHAW (SBN 242593)  
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5 Attorneys for Defendants  
6 CITY OF SAN JOSÉ and  
CITY COUNCIL OF SAN JOSÉ

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

10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA ex rel. SAN JOSÉ POLICE  
OFFICERS' ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSÉ and CITY COUNCIL  
15 OF SAN JOSÉ,

16 Defendants.

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

[PROPOSED] STIPULATED JUDGMENT AND  
ORDER

Complaint Filed: April 29, 2013

Trial Date: None Set

17  
18 In this action, Plaintiff San José Police Officers' Association ("SJPOA") filed a Verified  
19 Complaint in *Quo Warranto* against Defendants City of San José and City Council of San José ("City")  
20 (collectively, "the Parties") on April 29, 2013, alleging various defects in bargaining over the pension  
21 reform ballot measure (Resolution No. 76158) that subsequently became known as Measure B. The  
22 Court has been advised that, after extensive negotiations, the Parties have reached a Settlement  
23 Framework and Agreement of this action and related proceedings, and has received Stipulated Facts and  
24 Proposed Findings executed by the Parties, pursuant to the Settlement Framework and Agreement. The  
25 Court, having considered the Stipulated Facts and Proposed Findings and the other papers and pleadings  
26 filed, and good cause existing therefor, hereby issues the following as its Stipulated Judgment and Order  
27 herein.  
28

1  
2 Factual Findings of the Court

3 1. The California Supreme Court has held that a charter city (such as the City of San José)  
4 must comply with the meet and confer requirements of the Meyers-Milias-Brown Act (“MMBA”) –  
5 which govern relations between local public agency employers and local public employee organizations  
6 – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.

7 2. It is clear from the Parties' submissions and recitations of the relevant facts that the  
8 Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-  
9 upon impasse on October 31, 2011.

10 3. The MMBA's "duty to bargain requires the public agency to refrain from making  
11 unilateral changes in employees' wages and working conditions until the employer and employee  
12 association have bargained to impasse .... " If an impasse exists, however, it may be broken, and the  
13 duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be  
14 futile.

15 4. In this case, the issue is whether impasse existed and, if so, whether it had been broken by  
16 post-impasse ballot changes made by the City and whether the City Council should have negotiated  
17 further with SJPOA prior to placing the matter before the voters.  
18

19  
20 Conclusions

21 1. Here, both Parties met and conferred in good faith before reaching an agreed-upon  
22 impasse on October 31, 2011.

23 2. However, continued modification of the proposed ballot language after impasse –  
24 including concessions made by the City – created a further obligation to meet and confer before placing  
25 Measure B on the ballot.

26 3. The City’s failure to do so is deemed to be a procedural defect significant enough to  
27 declare null and void Resolution 76158, which placed Measure B on ballot.  
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Based on the foregoing, IT IS ORDERED that Resolution 76158, which placed Measure B on ballot, is null and void due to a procedural defect in bargaining.

IT IS FURTHER ORDERED that Measure B was not properly placed before the electorate and it and all of its provisions are therefore invalid.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Beth A.R. McGowen  
Judge of the Santa Clara County Superior Court

# **EXHIBIT E**

1 JONATHAN V. HOLTZMAN (SBN 99795)  
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6 CITY OF SAN JOSE and  
7 CITY COUNCIL OF SAN JOSE

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

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FILED Santa Clara Co  
06/28/13 1:54pm  
David H. Yamasaki  
Chief Executive Officer  
By: jcao@nguyen DTSCIV  
R#201300065141  
EX \$870.00  
TL \$870.00  
Case: 1-13-CV-245503

J. CAO-NGUYEN

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA ex rel. SAN JOSE POLICE  
OFFICERS' ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE and CITY COUNCIL  
16 OF SAN JOSE,

17 Defendants.

Case No.: 113-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

DEFENDANTS CITY OF SAN JOSE'S AND  
CITY COUNCIL OF SAN JOSE'S ANSWER  
TO VERIFIED COMPLAINT IN *QUO*  
*WARRANTO* (CODE CIV. PROC. § 803;  
CAL. CODE REG. TITLE 11, SECTION  
2(A))

Complaint Filed: April 29, 2013

Trial Date: Not assigned

By Fax

19  
20 TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 Defendants CITY OF SAN JOSE and CITY COUNCIL OF SAN JOSE ("Defendants") answer  
22 the Verified Complaint in *Quo Warranto* as follows:

23 1. Answering Paragraph 1 of the Verified Complaint (Complaint), Defendants ADMIT the  
24 allegations contained in that paragraph.

25 2. Answering Paragraph 2 of the Complaint, Defendants ADMIT that Defendant CITY OF  
26 SAN JOSE is a Charter City.

1           3.        Answering Paragraph 3 of the Complaint, Defendants AVER that Defendant CITY  
2 COUNCIL OF SAN JOSE is the governing body of the City of San Jose and otherwise DENY the  
3 allegations contained in Paragraph 3 of the Complaint.

4           4.        Answering Paragraph 4 of the Complaint, Defendants ADMIT the allegations contained  
5 in that paragraph.

6           5.        Answering Paragraph 5 of the Complaint, Defendants AVER that that paragraph contains  
7 only legal conclusions to which no response is required. To the extent they are required to respond to  
8 that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 5 of the  
9 Complaint.

10          6.        Answering Paragraph 6 of the Complaint, Defendants ADMIT that the San Jose Police  
11 Officers' Association (SJPOA) is the recognized employee organization for the classifications  
12 enumerated. Defendants AVER that the remainder of this paragraph contains only legal conclusions to  
13 which no response is required. To the extent they are required to respond to that paragraph's  
14 allegations, Defendants DENY the allegations contained in Paragraph 6 of the Complaint.

15          7.        Answering Paragraph 7 of the Complaint, Defendants AVER that that paragraph contains  
16 only legal conclusions to which no response is required. To the extent they are required to respond to  
17 that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 7 of the  
18 Complaint.

19          8.        Answering Paragraph 8 of the Complaint, Defendants AVER that that paragraph contains  
20 only legal conclusions to which no response is required. To the extent they are required to respond to  
21 that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 8 of the  
22 Complaint.

23          9.        Answering Paragraph 9 of the Complaint, Defendants AVER that that paragraph contains  
24 only legal conclusions to which no response is required. To the extent they are required to respond to  
25 that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 9 of the  
26 Complaint.

27          10.       Answering Paragraph 10 of the Complaint, Defendants AVER that that paragraph  
28 contains only legal conclusions to which no response is required. To the extent they are required to

1 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 10 of  
2 the Complaint.

3 11. Answering Paragraph 11 of the Complaint, Defendants AVER that that paragraph  
4 contains only legal conclusions to which no response is required. To the extent they are required to  
5 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 11 of  
6 the Complaint.

7 12. Answering Paragraph 12 of the Complaint, Defendants AVER that that paragraph  
8 contains only legal conclusions to which no response is required. To the extent they are required to  
9 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 12 of  
10 the Complaint.

11 13. Answering Paragraph 13 of the Complaint, Defendants AVER that that paragraph  
12 contains only legal conclusions to which no response is required. To the extent they are required to  
13 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 13 of  
14 the Complaint.

15 14. Answering Paragraph 14 of the Complaint, Defendants AVER that Measure B, a charter  
16 amendment submitted to San Jose voters by Defendant CITY COUNCIL OF SAN JOSE at the June  
17 2012 election, is a legal document that speaks for itself. Except as expressly averred, Defendants DENY  
18 the allegations contained in that paragraph.

19 15. Answering Paragraph 15 of the Complaint, Defendants ADMIT THAT Measure B was  
20 overwhelmingly approved by over 69 percent of San Jose voters, and was subsequently filed with the  
21 California Secretary of State.

22 16. Answering Paragraph 16 of the Complaint, Defendants AVER that that paragraph  
23 contains only legal conclusions to which no response is required. To the extent they are required to  
24 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 16 of  
25 the Complaint.

26 17. Answering Paragraph 17 of the Complaint, Defendants AVER that on or about June 3,  
27 2011, the City and the SJPOA agreed to continue to meet and confer over pension and retiree healthcare  
28 benefits for City employees. Defendants further AVER that the City and the SJPOA agreed to an opt-in

1 program at the sole option of the SJPOA and if certain criteria are met. Except as expressly averred,  
2 Defendants deny the allegations contained in that paragraph.

3 18. Answering Paragraph 18 of the Complaint, Defendants ADMIT the allegations contained  
4 in that paragraph.

5 19. Answering Paragraph 19 of the Complaint, Defendants DENY the allegations contained  
6 in that paragraph.

7 20. Answering Paragraph 20 of the Complaint, Defendants AVER that on or about May 13,  
8 2011, the Mayor, Vice-Mayor and several members of the City Council released a memorandum on  
9 "Fiscal Reforms" suggesting, among other reforms, that the City place a ballot measure before the voters  
10 related to retirement benefits for City employees. Except as expressly averred, Defendants DENY the  
11 allegations contained in that paragraph.

12 21. Answering Paragraph 21 of the Complaint, Defendants DENY the allegations contained  
13 in that paragraph.

14 22. Answering Paragraph 22 of the Complaint, Defendants DENY the allegations contained  
15 in that paragraph.

16 23. Answering Paragraph 23 of the Complaint, Defendants AVER that the City  
17 Administration has never used the \$650 Million figure in official documents or as a basis for  
18 negotiations. Except as expressly averred, Defendants DENY the allegations contained in that  
19 paragraph.

20 24. Answering Paragraph 24 of the Complaint, Defendants AVER that the City has never  
21 used the \$650 Million figure in official documents or as a basis for negotiations. Except as expressly  
22 averred, Defendants DENY the allegations contained in that paragraph.

23 25. Answering Paragraph 25 of the Complaint, Defendants lack information sufficient to  
24 form a belief as to the truth of the allegations contained in paragraph 6, and on that basis DENY the  
25 allegations contained in that paragraph.

26 26. Answering Paragraph 26 of the Complaint, Defendants ADMIT the allegations contained  
27 in that paragraph.

28

1           27.     Answering Paragraph 27 of the Complaint, Defendants DENY the allegations contained  
2 in that paragraph.

3           28.     Answering Paragraph 28 of the Complaint, Defendants AVER that the ground rules  
4 signed by the parties stated that “the parties agree to meet and confer in good faith and agree to complete  
5 the negotiation process by October 31, 2011. If the parties are unable to reach an agreement on  
6 retirement reform and/or related ballot measure(s) by October 31, 2011, the parties shall proceed to  
7 impasse, pursuant to the procedures outlined in the Employer-Employee Relations Resolution No.  
8 39367. . . .” Except as expressly averred, Defendants DENY the allegations contained in that paragraph.

9           29.     Answering Paragraph 29 of the Complaint, Defendants DENY the allegations contained  
10 in that paragraph.

11           30.     Answering Paragraph 30 of the Complaint, Defendants AVER that the City and the  
12 SJPOA met and exchanged proposals during retirement reform negotiations and mediation. Except as  
13 expressly averred, Defendants DENY the allegations contained in that paragraph.

14           31.     Answering Paragraph 31 of the Complaint, Defendants AVER that the SJPOA and other  
15 bargaining units provided proposals to the City during negotiations and mediation. Except as expressly  
16 averred, Defendants DENY the allegations contained in that paragraph.

17           32.     Answering Paragraph 32 of the Complaint, Defendants ADMIT the allegations contained  
18 in that paragraph.

19           33.     Answering Paragraph 33 of the Complaint, Defendants DENY the allegations contained  
20 in that paragraph.

21           34.     Answering Paragraph 34 of the Complaint, Defendants AVER that on November 11,  
22 2011, the SJPOA provided the City with a revised package proposal on retirement benefits that proposed  
23 moving to CalPERS; and on November 18 and December 1, 2011, the SJPOA provided the City with  
24 revised package proposals on retirement benefits, which included only incremental changes. Defendants  
25 further AVER that on December 6, 2011, several unions, including the SJPOA, made public comments  
26 at the City Council meeting requesting that the City re-engage in mediation in an attempt to reach  
27 agreement. Except as expressly averred, Defendants DENY the allegations contained in that paragraph.

28

1           35.     Answering Paragraph 35 of the Complaint, Defendants AVER that they engaged in a  
2 second round of mediation on January 17, 18 and February 6 and 10, 2012, as requested by the SJPOA  
3 and other bargaining units. Defendants further AVER that although the parties were unable to reach  
4 agreement, the City made several concessions in mediation. Except as expressly averred, Defendants  
5 DENY the allegations contained in that paragraph.

6           36.     Answering Paragraph 36 of the Complaint, Defendants ADMIT that on December 1,  
7 2011, the actuary for the Retirement Plan released updated projections for the City's retirement  
8 contributions. Except as expressly admitted, Defendants DENY the allegations contained in that  
9 paragraph.

10          37.     Answering Paragraph 37 of the Complaint, Defendants DENY the allegations contained  
11 in that paragraph.

12          38.     Answering Paragraph 38 of the Complaint, Defendants DENY the allegations contained  
13 in that paragraph.

14          39.     Answering Paragraph 39 of the Complaint, Defendants AVER that on December 6, 2011,  
15 the City Council approved a ballot measure for the June 2012 election. Defendants further AVER that  
16 the ballot measure is a legal document that speaks for itself. Except as expressly averred, Defendants  
17 DENY the allegations contained in that paragraph.

18          40.     Answering Paragraph 40 of the Complaint, Defendants AVER that the ballot measure is a  
19 legal document that speaks for itself. Except as expressly averred, Defendants DENY the allegations  
20 contained in that paragraph.

21          41.     Answering Paragraph 41 of the Complaint, Defendants DENY the allegations contained  
22 in that paragraph.

23          42.     Answering Paragraph 42 of the Complaint, Defendants AVER that the parties met on  
24 December 22, 2011, and January 9, 2012. Except as expressly averred, Defendants DENY the  
25 allegations contained in that paragraph.

26          43.     Answering Paragraph 43 of the Complaint, Defendants AVER that the City notified the  
27 SJPOA that a revised ballot measure identical to what was previously presented to the SJPOA in  
28 mediation to which no response was received from the SJPOA was to be considered by the CITY

1 COUNCIL OF SAN JOSE on March 6, 2012, for the June 2012 ballot. Except as expressly averred,  
2 Defendants DENY the allegations contained in that paragraph.

3 44. Answering Paragraph 44 of the Complaint, Defendants AVER that on or about February  
4 24, 2012, the SJPOA requested to meet and confer over the same proposed ballot measure the City  
5 previously proposed to the SJPOA in mediation to which no response was received from the SJPOA.  
6 Except as expressly averred, Defendants DENY the allegations contained in that paragraph.

7 45. Answering Paragraph 45 of the Complaint, Defendants DENY the allegations contained  
8 in that paragraph.

9 46. Answering Paragraph 46 of the Complaint, Defendants AVER that on March 2, 2012, the  
10 SJPOA provided the City with a package proposal that once again proposed moving its members into  
11 the CalPERS system. Except as expressly averred, Defendants DENY the allegations contained in that  
12 paragraph.

13 47. Answering Paragraph 47 of the Complaint, Defendants AVER that they repeated their  
14 previously stated concerns with the SJPOA's proposals to move its members into the CalPERS system.  
15 Except as expressly averred, Defendants DENY the allegations contained in that paragraph.

16 48. Answering Paragraph 48 of the Complaint, Defendants ADMIT the allegations contained  
17 in that paragraph.

18 49. Answering Paragraph 49 of the Complaint, Defendants AVER the ballot measure  
19 identified in that paragraph is a legal document that speaks for itself. Except as expressly averred,  
20 Defendants DENY the allegations contained in that paragraph.

21 50. Answering Paragraph 50 of the Complaint, Defendants AVER that that paragraph  
22 contains only legal conclusions to which no response is required. To the extent they are required to  
23 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 50 of  
24 the Complaint.

25 51. Answering Paragraph 51 of the Complaint, Defendants AVER that the Mayor and Vice-  
26 Mayor issued a press release which stated that "San Jose's retirement director has projected costs could  
27 rise to \$650 million per year by fiscal year 2015-2016 if the funds don't achieve their projected 7.5%-  
28

1 plus rates-of-return or if actuarial factors continue to increase pension costs.” Except as expressly  
2 averred, Defendants DENY the allegations contained in that paragraph.

3 52. Answering Paragraph 52 of the Complaint, Defendants AVER that on or about May 13,  
4 2011, the Mayor, Vice-Mayor and several members of the City Council released a memorandum on  
5 “Fiscal Reforms” suggesting, among other reforms, that the City place a ballot measure before the voters  
6 limiting retirement benefits for City employees. Except as expressly averred, Defendants DENY the  
7 allegations contained in that paragraph.

8 53. Answering Paragraph 53 of the Complaint, Defendants DENY the allegations contained  
9 in that paragraph.

10 54. Answering Paragraph 54 of the Complaint, Defendants DENY the allegations contained  
11 in that paragraph.

12 55. Answering Paragraph 55 of the Complaint, Defendants DENY the allegations contained  
13 in that paragraph.

14 56. Answering Paragraph 56 of the Complaint, Defendants lack information sufficient to  
15 form a belief as to the truth of the allegations contained in paragraph 56, and on that basis DENY the  
16 allegations contained in that paragraph.

17 57. Answering Paragraph 57 of the Complaint, Defendants AVER that that paragraph  
18 contains only legal conclusions to which no response is required. To the extent they are required to  
19 respond to that paragraph’s allegations, Defendants DENY the allegations contained in Paragraph 57 of  
20 the Complaint.

21 58. Answering Paragraph 58 of the Complaint, Defendants DENY the allegations contained  
22 in that paragraph

23 59. Answering Paragraph 59 of the Complaint, Defendants AVER that on or about March 7,  
24 2012, the State of California’s Joint Legislative Audit Committee requested an audit of the operating  
25 budget and current and future pension obligations of the City. Except as expressly averred, Defendants  
26 DENY the allegations contained in that paragraph.

27 60. Answering Paragraph 60 of the Complaint, Defendants AVER that the document issued  
28 by the State of California’s Joint Legislative Audit Committee on or about March 7, 2012, is a legal

1 document that speaks for itself. Except as expressly averred, Defendants DENY the allegations  
2 contained in that paragraph.

3 61. Answering Paragraph 61 of the Complaint, Defendants AVER that that paragraph  
4 contains only legal conclusions to which no response is required. To the extent they are required to  
5 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 61 of  
6 the Complaint.

7 62. Answering Paragraph 62 of the Complaint, Defendants DENY the allegations contained  
8 in that paragraph.

9 63. Answering Paragraph 63 of the Complaint, Defendants AVER that Defendants fully  
10 complied with all statutory and legal duties. Except as expressly averred, Defendants DENY the  
11 allegations contained in that paragraph.

12 64. Answering Paragraph 64 of the Complaint, Defendants AVER that the City placed a  
13 ballot measure before the electorate after at least eight (8) months of negotiations, including two (2)  
14 rounds of mediation. Except as expressly averred, Defendants DENY the allegations contained in that  
15 paragraph.

16 65. Answering Paragraph 65 of the Complaint, Defendants AVER that that paragraph  
17 contains only legal conclusions to which no response is required. To the extent they are required to  
18 respond to that paragraph's allegations, Defendants DENY the allegations contained in Paragraph 65 of  
19 the Complaint.

20  
21 **SEPARATE AFFIRMATIVE DEFENSES**

22 Defendants assert the following affirmative defenses without admitting, acknowledging, or  
23 assuming that the City bears the burden of proof as to any of them.

24 **FIRST AFFIRMATIVE DEFENSE**

25 (Failure to State a Claim)

26 The Complaint and each of its purported causes of action fail to state facts sufficient to constitute  
27 a cause of action against the City upon which relief can be granted.

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**SECOND AFFIRMATIVE DEFENSE**

(Waiver and Estoppel)

This action is barred by the doctrines of waiver and estoppel.

**THIRD AFFIRMATIVE DEFENSE**

(Laches)

This action is barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

This action is barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

(Good Faith)

Defendants acted reasonably and in good faith at all times material herein based on all relevant facts and circumstances known to Defendants at the time they so acted. Accordingly, any recovery or relief sought by the Complaint is barred.

**SIXTH AFFIRMATIVE DEFENSE**

(Reservation of Rights)

Defendants may have additional defenses that cannot be articulated at this time due to Plaintiff's failure to particularize its claims and due to its failure to provide more specific information concerning those claims. Defendants therefore reserve the right to assert additional defenses upon further particularization Plaintiff's claims, upon examination of documents provided, upon discovery of further information concerning the alleged claims, and upon the development of other pertinent information.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants respectfully requests that this Court grant the following relief:

1. That the Verified Complaint in *Quo Warranto* be denied in its entirety;
2. That judgment be entered in favor of the Defendants and against the Plaintiff on all claims;
3. That Defendants be awarded costs; and

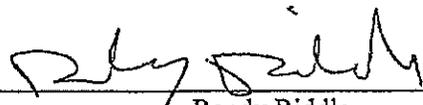
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4. That the Court grants such other relief in favor of Defendants as the Court deems just and proper.

Respectfully Submitted,

Dated: June 28, 2013

RENNE SLOAN HOLTZMAN SAKAI LLP

By:   
Randy Riddle  
Attorneys for Defendants  
CITY OF SAN JOSE and  
CITY COUNCIL OF SAN JOSE

RENNE SLOAN HOLTZMAN SAKAI LLP  
Attorneys at Law

# **EXHIBIT F**



# CITY COUNCIL AGENDA

**MARCH 8, 2016**

## SYNOPSIS

CHAPPIE JONES	DISTRICT 1	PIERLUIGI OLIVERIO	DISTRICT 6
ASH KALRA	DISTRICT 2	TAM NGUYEN	DISTRICT 7
RAUL PERALEZ	DISTRICT 3	ROSE HERRERA VICE MAYOR	DISTRICT 8
MANH NGUYEN	DISTRICT 4	DONALD ROCHA	DISTRICT 9
MAGDALENA CARRASCO	DISTRICT 5	JOHNNY KHAMIS	DISTRICT 10
		SAM LICCARDO MAYOR	

*The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.*

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Successor Agency to the Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, the Mayor will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <http://www.sanjoseca.gov/index.aspx?NID=3549>. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Tower 14<sup>th</sup> Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**  
9:32 a.m. - Closed Session, Call to Order in Council Chambers  
Absent Councilmembers: All Present.  
  
1:31 p.m. - Regular Session, Council Chambers, City Hall  
Absent Councilmembers: All Present.
- **Invocation (District 3)**  
Reverend Gerald Sakamoto read a translation of the Metta Sutta for the Invocation.
- **Pledge of Allegiance**  
Mayor Liccardo led the Pledge of Allegiance.
- **Orders of the Day**  
The Orders of the Day and the Amended Agenda were approved, with notice that there would be a break during the meeting to engage in a Closed Session regarding labor negotiations.
- **Closed Session Report**  
None provided.

# 1. CEREMONIAL ITEMS

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- 1.1 Presentation of a proclamation recognizing March 2016 as “Women Veterans Month” in the City of San José. (Herrera)  
**Mayor Liccardo and Vice Mayor Rose Herrera presented a proclamation recognizing March 2016 as “Women Veterans Month” in the City of San José.**

# 2. CONSENT CALENDAR

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- 2.1 **Approval of Minutes.**  
**None provided.**

- 2.2 **Final Adoption of Ordinances.**

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 29690 – An Ordinance of the City of San José amending Title 20 (Zoning) of the San José Municipal Code to Amend Sections 20.100.220, 20.100.720 and 20.100.940 of Chapter 20.100. CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making that involves no changes in the physical environment. (Planning, Building and Code Enforcement)  
**Ordinance No. 29690 was adopted.**
- (b) ORD. NO. 29691 – An Ordinance of the City of San José rezoning certain real property of approximately 0.16 acre, located on the East side of Almaden Avenue, approximately 80 feet North of Oak Street (890 Almaden Avenue), from the CN Commercial Neighborhood Zoning District to the R-2 Two-Family Residence Zoning District. CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), and Supplemental EIR (Resolution No. 77617). File No. C15-005. (Planning, Building and Code Enforcement)  
**Ordinance No. 29691 was adopted.**
- (c) ORD. NO. 29692 – An Ordinance of the City of San José rezoning certain real property of approximately 0.17 acre, located on the East Side of South Capitol Avenue, approximately 400 feet South of Alum Rock Avenue (56 South Capitol Avenue), from the CP Commercial Pedestrian Zoning District to the R-1-8 Single Family Residence Zoning District. CEQA: Determination of Consistency with Envision San José 2040 General Plan EIR (Resolution No. 76041) and Supplemental EIR (Resolution No. 77617). File No. C15-050. (Planning, Building and Code Enforcement)  
**Ordinance No. 29692 was adopted.**

## 2. CONSENT CALENDAR

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### 2.2 Final Adoption of Ordinances. (Cont'd.)

**Recommendation:** Final adoption of ordinances.

- (d) ORD. NO. 29693 – An Ordinance of the City of San José rezoning certain real property of approximately 0.72 acre situated approximately 230 feet North of East Santa Clara Street on the West Side of North 4<sup>th</sup> Street (49 North 4<sup>th</sup> Street) from the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District. CEQA: Addendum to the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041). File No. C15-052. (Planning, Building and Code Enforcement)  
**Ordinance No. 29693 was adopted.**
- (e) ORD. NO. 29694 – An Ordinance of the City of San José rezoning certain real property of approximately 5.4 acres situated on the Southeast corner of San Ignacio Avenue and Great Oaks Boulevard (80 Great Oaks Boulevard) from the A(PD) Planned Development Zoning District to the CIC Combined Industrial/Commercial Zoning District. CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final EIR, (Resolution No. 76041) and Supplemental EIR (Resolution No. 77617). File No. C15-061. (Planning, Building and Code Enforcement)  
**Ordinance No. 29694 was adopted.**
- (f) ORD. NO. 29695 – An Ordinance of the City of San José rezoning certain real property of approximately 1.30 acres situated on the East Side of Sunol Street, approximately 120 feet North of West San Carlos Street (777 West San Carlos Street) from the CP Commercial Pedestrian and CIC Combined Industrial/Commercial Zoning Districts to the RM(PD) Planned Development Zoning District. File No. PDC 14-033. CEQA: Addendum to the Diridon Station Area Plan EIR (Resolution No. 77096). File No. PDC14-033. (Planning, Building and Code Enforcement)  
**Ordinance No. 29695 was adopted.**
- (g) ORD. NO. 29696 – An Ordinance of the City of San José rezoning certain real property of approximately 78.4 acres on the East Side of Perimeter Road, between Great Oaks Boulevard and Miyuki Drive, from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District. CEQA: Addendum to the Great Oaks Mixed Use Project Final EIR (Resolution No. 77219) and the Envision San José 2040 General Plan Supplemental EIR (Resolution No. 77617). File No. PDC15-059. (Planning, Building and Code Enforcement)  
**Ordinance No. 29696 was adopted.**

## 2. CONSENT CALENDAR

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### 2.2 Final Adoption of Ordinances. (Cont'd.)

- (h) ORD. NO. 29697 – An Ordinance of the City of San José rezoning certain real property of approximately 7.68 gross acres situated on the Northwest corner of South Winchester Boulevard and Williams Road (881 South Winchester Boulevard) from the R-M Multi-Family Zoning District to R-M (PD) Planned Development Zoning District. CEQA: Reserve Residential Project Environmental Impact Report, File No. PDC14-040. (Planning, Building and Code Enforcement)  
**Ordinance No. 29697 was adopted.**

**Recommendation:** Final adoption of ordinances.

- (i) ORD. NO. 29698 – An Ordinance of the City of San José rezoning certain real property of approximately 1.72 acres situated at the Northeast side of Stockton Avenue, approximately 300 feet North of West Santa Clara Street (106-120 and 138 Stockton Avenue) from the CG Commercial General Zoning District to the A(PD) Planned Development Zoning District. CEQA: Addendum to the Downtown Strategy 2000 Final EIR (Resolution No. 72767) and Diridon Station Area Plan Final EIR (Resolution No. 77096). File No. PDCE15-010. (Planning, Building and Code Enforcement)  
**Ordinance No. 29698 was adopted.**
- (j) ORD. NO. 29699 – An Ordinance of the City of San José rezoning certain real property of approximately 0.86 gross acre situated on the East side of South Buena Vista Avenue, approximately 500 feet South of West San Carlos Street (368 & 388 South Buena Vista Avenue), from the R-M Multiple Residence Zoning District to the R-M(PD) Planned Development Zoning District. CEQA: 368 and 388 South Buena Vista Avenue Mitigated Negative Declaration. File No. PDC15-041. (Planning, Building and Code Enforcement)  
**Ordinance No. 29699 was adopted.**

### 2.3 Approval of Council Committee Minutes.

**Recommendation:** Approval of Council Committee Minutes.

- (a) Rules and Open Government Committee Minutes of February 10, 2016. (Mayor)  
(b) Neighborhood Services and Education Committee Minutes of February 11, 2016. (Rocha)  
(c) Public Safety, Finance, and Strategic Support Committee Minutes of February 18, 2016. (Oliverio)  
(d) Community and Economic Development Committee Minutes of February 22, 2016. (Khamis)

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

**Approved.**

## **2. CONSENT CALENDAR**

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**2.4 Mayor and Council Excused Absence Requests.**  
None provided.

**2.5 City Council Travel Reports.**  
None provided.

**2.6 Report from the Council Liaison to the Retirement Boards.**  
None provided.

**2.7 Lease Agreement with La Familia, LP for Office Space Located at 777 North First Street.**

**Recommendation:** Approve two new five-year Lease Agreements with La Familia, LP for three office spaces located at 777 North First Street comprised of the following:

- (a) Suite 320: 945 rentable square feet of office space for the Child Interview Center at a cost of \$21,433 for the first year of the lease, \$22,076 for the second year, \$22,738 for the third year, \$23,421 for the fourth year, and \$24,127 for the fifth year, for a total of \$113,795 for the five-year lease term;
- (b) Suite 430: 560 rentable square feet of additional office space for the Police Professional Standards and Conduct Unit at a cost of \$12,432 for the first year of the lease, \$12,805 for the second year, \$13,190 for the third year, \$13,586 for the fourth year, and \$13,994 for the fifth year, for a total of \$66,007 for the five-year lease term; and
- (c) Suite 666: 3,553 rentable square feet of office space for the Police Professional Standards and Conduct Unit at a cost of \$78,877 for the first year of the lease, \$81,244 for the second year, \$83,682 for the third year, \$86,193 for the fourth year, and \$88,779 for the fifth year, for a total of \$418,775 for the five-year lease term.

CEQA: Not a Project, File No. PP10-066(f), Lease of equipment or existing space for the same use that involve no physical changes to the environment. Council District 3.  
(Economic Development)

**Approved.**

**2.8 Amendment to the Master Agreement with Cornerstone Earth Group for Environmental Support Services.**

**Recommendation:** Approve the First Amendment to the Master Agreement with Cornerstone Earth Group, for environmental consulting services, increasing the amount of compensation by \$200,000, for a total agreement not to exceed \$550,000, with no extension on the term of the agreement, which expires on March 1, 2017. CEQA: Not a Project, File No. PP10-066(d), Agreements and Contracts for Consultant Services with no change in the physical environment. (Environmental Services)

(Deferred from 3/1/16 – Item 2.7)

**Approved.**

## 2. CONSENT CALENDAR

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### 2.9 Cesar Chavez Day Flag Raising.

**Recommendation:** As recommended by the Rules and Open Government Committee on February 24, 2016:

- (a) Approve the Cesar Chavez Day Flag Raising scheduled on March 30, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Kalra)  
[Rules Committee referral from 2/24/16 – Item G(1)(a)]

**Approved.**

### 2.10 Veggie Fest.

**Recommendation:** As recommended by the Rules and Open Government Committee on February 24, 2016:

- (a) Approve the Veggie Fest scheduled on April 9, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Kalra)  
[Rules Committee referral from 2/24/16 – Item G(1)(b)]

**Approved.**

### 2.11 Jewish American Heritage Month Flag Raising and Reception.

**Recommendation:** As recommended by the Rules and Open Government Committee on February 24, 2016:

- (a) Approve the Jewish American Heritage Month Flag Raising and Reception scheduled on May 10, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Herrera)  
[Rules Committee referral from 2/24/16 – Item G(1)(c)]

**Approved.**

### 3. STRATEGIC SUPPORT SERVICES

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3.1 **Report of the City Manager, Norberto Dueñas (Verbal Report).**  
**City Manager Norberto Dueñas heralded staff's diligent efforts in handling storm-related incidents over the weekend and indicated that the current infrastructure has held up under El Niño thus far.**

3.2 **Labor Negotiations Update.**

**Recommendation:** Accept Labor Negotiations Update.  
 None provided.

3.3 **Potential Sales and Use Taxes Ballot Measures.**

**Recommendation:**

- (a) Council discussion of community survey results for a potential revenue measure for the June 7, 2016, ballot including consideration of a general purpose one-quarter percent retail transactions and use ("sales tax") measure.
- (b) Adopt a resolution of the City Council calling and giving notice, on its own motion, for a Special Municipal Election to be held on June 7, 2016, to submit to the electors of the City of San José the following measure:

**San José Local City Services**

To fund city services such as: improving police response to violent crimes, burglaries, and other safety needs; improving 911/emergency medical/fire response times; repairing potholes and streets; maintaining parks; expanding gang prevention; and creating jobs through economic development, <b>shall the City of San José enact a ¼ percent sales tax for 9 years</b> , providing about \$40 million annually, requiring Independent Citizens Oversight with public review of spending, and all revenues controlled locally?	YES	
	NO	

- (1) Council discussion and consideration of whether the full text of the proposed ordinance should be printed in the June 7, 2016, Voter's Sample Ballot, pursuant to Elections Code 12111, to be incorporated in the resolution calling the election;
- (2) Council discussion and consideration of whether to permit rebuttal arguments in the June 7, 2016, Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election;
- (3) Council discussion and consideration of whether to authorize the City Council or any member or members of the City Council to submit an argument in favor of the City measure on the June 7, 2016, Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election; and

### 3. STRATEGIC SUPPORT SERVICES

#### 3.3 Potential Sales and Use Taxes Ballot Measures. (Cont'd.)

**Recommendation:**

- (b) (4) Direct the City Clerk to take all actions necessary to place this measure for a June 7, 2016, Special Municipal Election, if needed.

**Resolution No. 77682 adopted.**

- (c) Adopt an ordinance amending Title 4 of the San José Municipal Code to add Chapter 4.60 to enact a transactions and use tax at the rate of 0.25% administered by the California Board of Equalization, subject to approval of a majority of the electors voting at the Special Municipal Election to be held on June 7, 2016.

CEQA: Not a Project, CEQA Guidelines Section 15378(b)(4). (City Manager)  
 (Deferred from 2/9/16 – Item 3.5 and 2/23/16 – Item 3.3)

**Ordinance No. 29704 adopted, including Staff’s recommendations, and supplemental memorandum dated March 8, 2016, as amended, revising language for a recommended sales and use tax ballot measure, and including Mayor Sam Liccardo’s memorandum dated March 7, 2016, to (1) Amend the City Manager’s recommendation calling and giving notice for a Special Municipal Election to be held on June 7, 2016 and to submit to the residents of the City of San José a one-quarter percent sales tax for 15 years; (2) to Direct the City Manager to develop a “Draft Proposed 2016 Sales Tax Spending Priorities List” focused on public safety, street repair and essential neighborhood services, to comply with the City Council and resident priorities. Such restorations should align generally with the 2011 Fiscal Reform Plan’s goal to restore key services to January 1, 2011 levels, along with the Police Sworn Staffing Restoration Strategy. The City Manager should present those spending priorities to the Council as an option – conditioned on the passage of the measure – as part of the 2016-2017 Proposed Operating Budget; (3) Approve a Resolution authorizing the City clerk to include the full text of the proposed ordinance and rebuttal arguments in the June 7, 2016, Voter’s Sample Ballot, pursuant to Election Code 12111 and 9285.**

To fund essential City services such as: improving police response to reduce violent crimes and burglaries; improving 911/emergency medical/fire response times; repairing potholes and streets; expanding gang prevention; and maintaining the City's long-term fiscal financial stability, shall the City of San José enact a .25% percent sales tax for 15 years, providing about \$40 million annually, requiring Independent Citizens Oversight with public review of spending, and all revenues controlled locally?	YES	
	NO	

Mayor Sam Liccardo was designated as the author of the ballot argument.

Noes: Khamis, Oliverio.

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.4 Preliminary Analysis and Discussion of Citizen-Initiated Gross Receipts Tax Ballot Measure and Update Options for the Current Business Tax.**

**Recommendation:** Consider the preliminary analysis of the citizen-initiated Gross Receipts Tax Ballot Measure and preliminary review and discussion of the City options for updating the current Business Tax. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Economic Development) Mayor Sam Liccardo's memorandum dated March 7, 2016 was accepted, with direction (1) to the City Manager to draft revisions to the City's current Business License Tax (Municipal Code Section 4.76.300), for Council consideration, with the goal of modernizing the existing tax and meet the following objectives: (a) Protect smallest businesses; (i) Ensure that the increase in the base rate for the smallest businesses does not exceed the equivalent of a 1 percent annual increase since 1986 (the last date on which the tax was revised); (ii) Make the existing tax structure more progressive, ensuring that larger businesses pay modestly more per employee than smaller ones; (b) Double the annual revenues from the tax in a manner which does not unduly influence business location decisions; (c) Expand the current maximum per-firm caps; (d) Include a Cost-of-Living Adjustment (COLA) to prevent erosion of revenue and City services over time; (e) Simplify compliance for taxpayers and administration for the City. Work with City Manager's Innovation Cabinet to create a system that ensures that businesses can obtain their licenses on-line; additionally (2) and Direct the City Manager to engage the business community and other stakeholders in the process of reviewing the proposed revisions.

With direction to Staff to return to Council mid to late June to discuss parameters of the plan which reflects the Mayor's memorandum, as well as staff proposed alternatives regarding the Business Tax to Consumer Price Index (CPI) and reviewing a more simplistic model in determining employee count.

Including direction for the Cities Association to explore the issue of sole proprietorship across the City's boundaries, so sole proprietors will not be required to have a business tax license tax in each city.

Noes: Oliverio.

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.5 Second Quarter Financial Reports for Fiscal Year 2015-2016.**

**Recommendation:** As recommended by the Public Safety, Finance and Strategic Support Committee on February 18, 2016:

- (a) Accept the following Second Quarter (period ending December 31, 2015) Financial Reports for Fiscal Year 2015-2016 for the following programs:
- (1) Debt Management Program;
  - (2) Investment Management Program; and
  - (3) Revenue Collection Program.

**Accepted.**

- (b) Adopt a resolution authorizing the Director of Finance to write off uncollectible debts in an amount up to \$1,126,625.98.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approval of City Actions. (Finance)

[Public Safety, Finance and Strategic Support referral 2/18/16 – Item (d)(6)]

**Resolution No. 77683 adopted.**

### **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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#### **4.1 Amendment to the City Council Policy for Surplus Property Related to Affordable Housing. (DEFERRED)**

**Recommendation:** Adopt a resolution approving a City Council Policy for disposing of surplus property that includes provisions relating to affordable housing. CEQA: Not a Project, File No. PP10-068(c), Code or Policy change that involve no changes in the physical environment. (Economic Development/Housing)

(Deferred from 2/2/16 – Item 4.1 and 3/1/16 – Item 4.1)

**Deferred to 3/22/16 per Administration**

### **5. NEIGHBORHOOD SERVICES**

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#### **5.1 Mayor's Gang Prevention Task Force Memorial/Shrine Policy.**

**Recommendation:** As recommended by the Public Safety, Finance and Strategic Support Committee on February 18, 2016, adopt a resolution establishing a City Council Policy for the removal of shrines or memorials as proposed by the Mayor's Gang Prevention Task Force. CEQA: Exempt, Section 15301 (d) Existing Facilities, File No. PP16-010, Removal of shrines and memorials that present a safety hazard. (Parks, Recreation and Neighborhood Services/Transportation)

[Public Safety, Finance and Strategic Support referral 2/18/16 – Item (d)(5)]

**Resolution No. 77684 adopted.**

## **6. TRANSPORTATION & AVIATION SERVICES**

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### **6.1 Award of Contract for Airport Federal Inspection Services Improvement Project at the Airport. (DEFERRED)**

**Recommendation:**

- (a) Report on bids, and award of a contract for the Airport Federal Inspection Services Improvement Project to the lowest responsible and responsive bidder and a contingency in the amount of fifteen percent of the contract amount.
- (b) Adopt a resolution authorizing the Director of Public Works to issue any single and/or multiple change orders up to the amount of the contingency.

CEQA: Determination of Consistency with the City of San José International Airport Master Plan Final EIR and Addenda thereto (Resolution Nos. 67380 and 71451), File Nos. PP15-053, PP15-122, and PP16-005. (Public Works/Airport)  
(City Council referral from 2/23/16 – Item 2.16)

**Deferred to 3/15/16 per Administration**

## **7. ENVIRONMENTAL & UTILITY SERVICES**

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## **8. PUBLIC SAFETY SERVICES**

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## **9. REDEVELOPMENT – SUCCESSOR AGENCY**

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### **9.1 Agreements with Grant Thornton LLP to Provide Annual Financial and Compliance Audits. (DEFERRED)**

**Recommendation:**

- (a) Approval by the City Council of an Agreement with Grant Thornton LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2016, 2017, 2018, 2019, and 2020 with two one-year extension options for fiscal years ended June 30, 2021 and 2022, with annual compensation not to exceed \$544,160 in years one and two and with annual increased adjusted by 2.5 percent in years three through seven, for a total amount not to exceed \$4,020,111 for a potential seven year term subject to annual appropriation of funds by the City Council.

*(Item Continued on the next page)*

## **9. REDEVELOPMENT – SUCCESSOR AGENCY**

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### **9.1 Agreements with Grant Thornton LLP to Provide Annual Financial and Compliance Audits. (DEFERRED) (Cont'd.)**

- (b) Approval by the Board of the Successor Agency to the Redevelopment Agency of an Agreement with Grant Thornton LLP to perform annual financial and compliance audit services for fiscal years ending June 30, 2016, 2017, 2018, 2019, and 2020 with two one-year extension options for fiscal years ended June 30, 2021 and 2022, with annual compensation not to exceed \$46,930 in years one and two and with annual increased adjusted by 2.5 percent in years three through seven, for a total amount not to exceed \$346,706 for a potential seven year term subject to annual appropriation of funds by the Board of the Successor Agency.

CEQA: Not a Project, File No. PP10-066(a), Agreement and Contracts for professional services with no changes in the physical environment. (City Auditor)

**Deferred to 3/15/16 per Administration**

- **Open Forum**

**Regina Moreno spoke on the plight of victims of domestic violence and the housing crisis in Silicon Valley.**

- **Adjournment**

**The Council of the City of San José adjourned at 6:45 p.m.**



**HOUSING AUTHORITY OF  
THE CITY OF SAN JOSE  
AGENDA**

**1:30 P.M.**

**TUESDAY, MARCH 8, 2016**

**CHAMBERS**

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1. **Call to Order**
2. **2017 Moving to Work Annual Plan.**

**Recommendation:** Authorize the City Housing Authority's Executive Director to submit a letter to the Housing Authority of the County of Santa Clara to support the 2017 Moving to Work Annual Plan, as described in the memorandum.

CEQA: Not a Project, File No.PP10-068, General Procedure and Policy Making that involves no changes in the physical environment. (Housing)

**Authorized.**

3. **Open Forum – None.**
4. **The Housing Authority of the City of San José was adjourned at 6:40 p.m.**