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27 California non-profit corporation.

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21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA on the RELATION of SAN
23 JOSE POLICE OFFICERS' ASSOCIATION,
24
25 *Plaintiff,*
26 v.
27 CITY OF SAN JOSE, and CITY COUNCIL OF
28 SAN JOSE,
29
30 *Defendants.*

CASE NO. 113-CV-245503

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTIONS TO VACATE
JUDGMENT AND FOR FURTHER TRIAL
OR NEW TRIAL [CCP § 657, ET SEQ. AND
CRC RULE 3.1600]**

Judge: Hon. Beth McGowen
Dept. 7
Date: May 17, 2016
Time: 9:00 am

1 Peter Constant, Steven Haug and the Silicon Valley Taxpayer’s Association, respectfully
2 renew their requests, dated March 9, 2016 and March 28, 2016, that the Court take Judicial Notice of
3 the following official government records, numbered 1 through 12 and make a new request that the
4 Court take Judicial Notice of official government records, numbered 13 through 15 pursuant to
5 Evidence Code § 452, subdivs. (b) and (c). Each of these documents are official records of the City
6 of San Jose, the Public Employee Relations Board and/or the California Department of Justice Office
7 of the Attorney General (“Attorney General”) and are directly relevant to the vacation of judgment
8 and to the request of further or new trial for the reasons set forth in the Memoranda filed in support
9 of the Motions to Vacate Judgment and for Further Trial or New Trial:

10 1. Excerpts of the San Jose City Charter, Article XV, sections 1500 to 1506 “Retirement”
11 and Article XV-A, sections 1501-A to 1515-A “Retirement”, at pp. 61-76.

12 2. City of San Jose Memorandum to the Honorable Mayor and City Council from Jennifer
13 Schembri and Jennifer A. Maguire, dated July 24, 2015; Subject: Approval of the Terms of the
14 Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising out
15 of Measure B with the San Jose Police Officers’ Association (SJPOA) and the San Jose Fire Fighters,
16 International Association of Fire Fighters, Local 230 (IAFF, Local 230) and Related Appropriation
17 Actions (Council Agenda 8/11/15).

18 3. City of San Jose Supplemental Memorandum to the Honorable Mayor and City Council
19 from Jennifer Schembri, dated August 17, 2015; Subject: Actions Related to the Settlement Agreement
20 with the San Jose Police Officers' Association and the San Jose Fire Fighters, International Association
21 of Fire Fighters, Local 230 (Council Agenda 8/18/15, Item: 3.4).

22 4. Addendum #2 to July 15, 2015 Alternative Pension Reform Settlement Framework
23 Between the City of San Jose and the San Jose Police Officers' Association (POA), The International
24 Association of Firefighters, Local 230 (IAFF); Proposed Quo Warranto Implementation Plan, August
25 14, 2015 (Attachment B to the August 17, 2015 Supplemental Memorandum).

26 5. Minutes of the City Council, City of San Jose, dated Tuesday, August 25, 2015.

27 6. Federated Alternative Pension Reform Settlement Framework, dated November 23,
28 2015, updated December 14, 2015 (City of San Jose).

1 7. City of San Jose Memorandum to the Honorable Mayor and City Council from Jennifer
2 Schembri and Jennifer A. Maguire, dated December 4, 2015; Subject: Approval of the Terms of the
3 Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising out
4 of Measure B with Bargaining Units Representing Employees in the Federated City Employees'
5 Retirement System and Modifications for Employees in Unit 99 and Units 81/82; and Related
6 Appropriation Actions (City Council Agenda 12/15/15, Item: 3.7).

7 8. City of San Jose, City Council Agenda, December 15, 2015 Synopsis.

8 9. Federated Alternative Pension Reform Settlement Framework Agreement – Executive
9 Summary, dated February 24, 2016 (City of San Jose).

10 10. Alternative Pension Reform Settlement Framework Agreement – Executive Summary,
11 dated September 4, 2015 (City of San Jose).

12 11. PERB Proposed Decisions Issued 7/1/2014 to 6/30/2015. The list of Proposed
13 Decisions includes the following information relevant to this action:

- 14 ■ In PERB Case No. SF-CE-00969-M, IAFF LOCAL 230 v. CITY OF SAN JOSE EJC,
15 Exceptions were filed 2/3/2015;
- 16 ■ In PERB Case No. SF-CE-00996-M, IFPTE, LOCAL 21, AFL-CIO v. CITY OF SAN
17 JOSE EJC Exceptions were filed 2/3/2015.

18 12. City of San Jose, City Council Agenda, March 8, 2016 Synopsis.

19 13. City of San Jose’s Memorandum of Points in Opposition to SJPOA's Application for
20 Leave to Sue in *Quo Warranto* dated and served on July 6, 2012.

21 14. Statement of Undisputed Facts in Opposition to SJPOA's Application for Leave to Sue
22 in *Quo Warranto*, dated and served on July 6, 2012.

23 15. Declaration of Alex Gurza in Opposition to San Jose Police Officers’ Application for
24 Leave to Sue in *Quo Warranto*, dated July 5, 2012.

25 **I. PUBLIC AVAILABILITY OF RECORDS**

26 Exhibit 1 is a record of the City of San Jose generally available to the public on the City of
27 San Jose’s website, at <<http://www.sanjoseca.gov/index.aspx?NID=397>>, City Clerk, “City
28 Charter.”

1 Exhibits 2, 3, 4, 6, 7, 9 and 10 are records of the City of San Jose generally available to the
2 public on the City of San Jose’s website, at <<http://www.sanjoseca.gov/index.aspx?NID=4657>>,
3 Office of the City Manager, “Measure B Settlement Discussions.”

4 Exhibits 5 and 8 are records of the City of San Jose generally available to the public on the
5 City of San Jose’s website, at <<http://www.sanjoseca.gov/index.aspx?nid=4535>>, Government,
6 “Council Agendas 2015.”

7 Exhibit 11 is a record of the Public Employee Relations Board generally available to the
8 public at the Public Employee Relations Board website at: [http://www.perb.ca.gov/aljreports/
9 ALJ_635717693084080991.pdf](http://www.perb.ca.gov/aljreports/ALJ_635717693084080991.pdf).

10 Exhibit 12 is a record of the City of San Jose generally available to the public on the City of
11 San Jose’s website, at <<http://www.sanjoseca.gov/index.aspx?nid=4535>>, Government, “Council
12 Agendas 2016.”

13 Exhibits 13 through 15 are records of the City of San Jose and the Attorney General, generally
14 available to the public on the City of San Jose’s website at
15 <http://www.sanjoseca.gov/index.aspx?NID=3182>. According to the representations on the City of
16 San Jose website these records are pleadings filed by the City with Attorney General in Opposition to
17 Relator’s Application for Leave to Sue in Quo Warranto.

18 **II. AUTHORITY FOR JUDICIAL NOTICE**

19 Peter Constant, Steven Haug and the Silicon Valley Taxpayer’s Association renew their
20 request that the Court take Judicial Notice of the official government records, numbered 1 through 12
21 and make a new request that the Court take Judicial Notice of official government records, numbered
22 13 through 15, based on the following authority:

23 Pursuant to California Evidence Code, section 452:

24 Judicial notice may be taken of the following matters: . . .(b) Regulations
25 and legislative enactments issued by or under the authority of the United
26 States or any public entity in the United States...(c) Official acts of the
legislative, executive, and judicial departments of the United States and
of any state of the United States.

27 (Evidence Code § 452, subdivs. (b) and (c).)

28

1 Evidence Code § 452(c) in particular, authorizes a court to take judicial notice of “[o]fficial
2 acts of the legislative, executive, and judicial departments of the United States and of any state of the
3 United States.” These “include records, reports and orders of administrative agencies.” (*Rodas v.*
4 *Spiegel* (2001) 87 Cal.App.4th 513, 518.) The Court may also take judicial notice of policy statements
5 and memoranda of governmental agencies, including those published on the internet. (See, e.g.,
6 *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38 n.3.) Judicial notice may
7 also be taken of rulemaking and other proposals by government officials. (See, e.g., *California Ass’n*
8 *for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 702 n.2;
9 see also, *As You Sow v. Conbraco Industries* (2005) 135 Cal.App.4th 431, 438 n.3.)

10 Reports issued by government agencies are the proper subjects of judicial notice. (See *Aguilar*
11 *v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 842, n.3 [“we may take judicial notice of the report
12 of a state executive officer as reflecting an ‘[o]fficial act’ ([Evid.Code,] § 452, subd. (c))”]; see also
13 *Estate of Giolitti* (1972) 26 Cal.App.3d 327, 335 [“we have taken judicial notice of a memorandum
14 from the State Controller’s Office ... [setting] forth the Controller’s posture to disallow the gift tax
15 deduction].)

16 The City of San Jose, the Public Employee Relations Board and the Attorney General are
17 public entities as defined by Evidence Code § 200. The provisions of California Evidence Code
18 section 452 have long been interpreted to enable the courts to take judicial notice of enactments of a
19 public entity, government records and reports, laws and official acts. (See, 1 Witkin, California
20 Evidence, (4th 2000) Judicial Notices, § 19, pg. 113; *People ex rel. Lungren v. Community*
21 *Redevelopment Agency* (1997) 56 Cal.App.4th 868 [considering a challenge to redevelopment
22 agency’s development agreement with Indian tribe, Court of Appeal would take judicial notice of
23 agreement and attachments]; *Laraway v. Sutro & Co., Inc.* (2002) 96 Cal.App.4th 266 [Court of
24 Appeal could take judicial notice of a school board resolution which was apparently inadvertently
25 replaced by a second copy of nearly identical resolution before the trial court].)

26 In addition, Courts have specifically recognized the application of Section 452, subdivs. (b)
27 and (c) to local entities. (*Trinity Park v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027, [“local
28

1 ordinances and the official resolutions, reports, and other official acts of a city."] overruled on other
2 grounds by *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193.)

3 Respectfully submitted,

4
5 DATED: 4-22-16

NIELSEN MERKSAMER PARRINELLO
GROSS & LEONI, LLP

6
7 By: Marguerite Mary Leoni

MARGUERITE MARY LEONI
CHRISTOPHER E. SKINNELL
JAMES W. CARSON
Attorneys for Intervenor, PETER CONSTANT

8
9
10 DATED: _____

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

11
12 By: _____

KENNETH H. LOUNSBERY
JAMES P. LOUGH
ALENA SHAMOS
YANA L. RIDGE
Attorneys for Intervenors, STEVEN HAUG
and SILICON VALLEY TAXPAYERS
ASSOCIATION

1 ordinances and the official resolutions, reports, and other official acts of a city."] overruled on other
2 grounds by *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193.)

3 Respectfully submitted,

4
5 DATED: _____ NIELSEN MERKSAMER PARRINELLO
6 GROSS & LEONI, LLP

7
8 By: _____
9 MARGUERITE MARY LEONI
10 CHRISTOPHER E. SKINNELL
11 JAMES W. CARSON
12 Attorneys for Intervenor, PETER CONSTANT

13 DATED: 4/22/2016 _____ LOUNSBERY FERGUSON ALTONA & PEAK, LLP

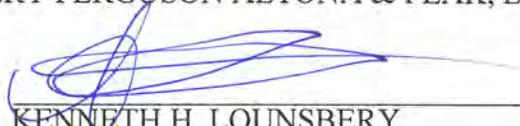
14 By:  _____
15 KENNETH H. LOUNSBERY
16 JAMES P. LOUGH
17 ALENA SHAMOS
18 YANA L. RIDGE
19 Attorneys for Intervenors, STEVEN HAUG
20 and SILICON VALLEY TAXPAYERS
21 ASSOCIATION
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EXHIBIT 1

SECTION 1305. Exercising Right Without Franchise.

The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise shall be a misdemeanor and each day that such continues shall constitute a separate violation.

SECTION 1306. Article Not Applicable to City.

Nothing in this Article shall be construed to apply to the City, or any department thereof, when furnishing any public utility or service.

SECTION 1307. Preservation of Rights.

Nothing contained in this Article shall be construed to affect or impair any rights, powers or privileges vested in, possessed by or available to the City by virtue of previous Charter provisions relating to franchises.

**ARTICLE XIV
SCHOOL SYSTEM**

SECTION 1400. Effect of Charter.

The organization, government and administration of the public school system in the City of San José shall not be affected by the adoption of this Charter, but shall continue in existence as is now or hereafter prescribed by the Education Code of the State of California.

**ARTICLE XV
RETIREMENT**

SECTION 1500. Duty to Provide Retirement System.

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees; provided, however the Council shall not establish any new or different plan after November 3, 2010 that is not actuarially sound.

Amended at election November 2, 2010

SECTION 1501. Exclusions.

- (a) The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.
- (b) On or after November 3, 2010, the Council, may by ordinance, exclude any officer or employee hired on or after the ordinance's effective date from any retirement plan or benefit of any retirement plan in existence on the effective date of the ordinance. Any such ordinance shall be subject to the requirements of applicable law.

Amended at election November 2, 2010

SECTION 1502. Authority to Join Other Systems.

Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

SECTION 1503. Continuance of Existing Retirement Systems.

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San José or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans

for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

SECTION 1504. Minimum Benefits for Certain Members of Police and Fire Departments.

The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

- (a) **RETIREMENT.** An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death a monthly retirement allowance equal to fifty percent (50%) of his or her “final compensation,” hereinafter defined, if he or she:
 - (1) Completes twenty (20) years of “service,” hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
 - (2) Completes twenty (20) years of “service,” hereinafter defined, is “disabled,” as such term is hereinafter defined, while holding such office or employment, and applies for such retirement while holding such office or employment.

- (b) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.

- (c) **ACTUARIAL SOUNDNESS.** Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.

- (d) **DEFINITIONS.** As used in this Section, “service” means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San José Municipal Code; and “final compensation” means final compensation as defined on the effective date of this Charter in Topic 1 of Part

3A of Chapter 9 of Article II of the San José Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San José Municipal Code “final compensation” shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his or her request for retirement. Also, as used in this Section, “disabled” means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.

- (e) MISCELLANEOUS. The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

- (f) PERSONS EXCLUDED. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

Amended at election June 7, 1994

SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

- (a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her “final compensation,” hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:
 - (1) Completes twenty-five (25) years or more of “service,” hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
 - (2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.

- (b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of “service,” hereinafter defined, and is “disabled,” as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San José Municipal Code as said Topic and Chapter read on the effective date of this Charter.

- (c) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.

- (d) **DEFINITIONS.** As used in this Section, “service” means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San José Municipal Code as such Part 4 reads on the effective date of this Charter; and “final compensation” means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San José Municipal Code. Also, as used in this Section, “disabled” means the incurrence of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her.

- (e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

- (f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San José Municipal Code, as it reads on the effective date of this Charter, do not apply.

Amended at election June 7, 1994

SECTION 1506. Conformance to State and Federal Law.

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

Added at election June 5, 1990

ARTICLE XV-A RETIREMENT

SECTION 1501-A. Findings.

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter “Essential City Services”).

The City’s ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City’s retirement plans is expected to continue to increase in the near future. In addition, the City’s costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City’s employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City’s ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City’s viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City’s sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters’ initial adoption of the City’s retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

SECTION 1502-A. Intent.

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

SECTION 1503-A. Act Supersedes All Conflicting Provisions.

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

SECTION 1504-A. Reservation of Voter Authority.

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

SECTION 1505-A. Reservation of Rights to City Council.

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

SECTION 1506-A. Current Employees.

- (a) “Current Employees” means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 1508).
- (b) Unless they voluntarily opt in to the Voluntary Election Program (“VEP,” described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees’ normal pension contributions and contributions towards retiree healthcare benefits.
- (c) The starting date for an employee’s compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.
- (d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees’ Retirement System.
- (e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

SECTION 1507-A. One Time Voluntary Election Program (“VEP”).

The City Council shall adopt a Voluntary Election Program (“VEP”) for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee’s earned benefit accrual; the change in benefit accrual will apply only to the employee’s future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

- (a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP’s effective date;

thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of “final compensation”, hereinafter defined, per year of service for future years of service only.
 - (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
 - (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees’ Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees’ Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
 - (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
 - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
 - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment (“COLA”) provisions will be the same as for the service retirement benefit in the VEP.

SECTION 1508-A. Future Employees – Limitation on Retirement Benefits – Tier 2.

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City’s cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City’s share of a Tier 2 defined benefit

plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, “final compensation” shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

SECTION 1509-A. Disability Retirements.

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered “disabled” for purposes of qualifying for a disability retirement, if all of the following is met:

- (i) An employee cannot do work that they did before; and
 - (ii) It is determined that
 - 1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or
 - 2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and
 - (iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.
- (c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.
- (d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.
- (e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

SECTION 1510-A. Emergency Measures to Contain Retiree Cost of Living Adjustments.

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

- (a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

SECTION 1511-A. Supplemental Payments to Retirees.

The Supplemental Retiree Benefit Reserve (“SRBR”) shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

SECTION 1512-A. Retiree Healthcare.

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, “low cost plan” shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees’ Retirement System.

SECTION 1513-A. Actuarial Soundness (for both pension and retiree healthcare plans).

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City’s pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City’s retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
 - (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- (i) the funding objectives and actuarial assumptions of the plans; and
 - (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

SECTION 1514-A. Savings.

In the event Section 1506(b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 1506(a), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

SECTION 1515-A. Severability.

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council

for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

Added at election June 5, 2012

ARTICLE XVI ELECTIONS

SECTION 1600. Municipal Elections.

All municipal elections shall be held in accordance with the following:

- (a) **REGULAR MUNICIPAL ELECTIONS.** A Regular Municipal Election is either a regularly scheduled Primary or Run-off Municipal Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years beginning in 1996. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election. A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election.
- (b) **GENERAL ELECTIONS.** Elections which are held simultaneously in all districts of the City, whether municipal, county or state elections are referred to as General Elections.
- (c) **SPECIAL MUNICIPAL ELECTIONS.** Special Municipal Elections are elections scheduled pursuant to Section 1601. The dates of any Special Municipal Election shall be set by resolution.
- (d) **RUN-OFF QUALIFICATION.** The two candidates who poll the greatest number of votes for office in the Primary Municipal Election shall be the only candidates whose names shall appear on the ballot as candidates for such office at the following Run-off Municipal Election.
- (e) **TIES.** Anything elsewhere to the contrary notwithstanding, all ties in any municipal election shall be decided by lot during open meeting of the Council, under the direction of the Council.
- (f) **DEATH OF A CANDIDATE.** If a candidate dies after the filing of nomination papers for the primary election, the deceased candidate is treated as a candidate for all election purposes. If the deceased candidate is elected, the office will be

EXHIBIT 2



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: July 24, 2015

Approved

Date

7/24/15

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

RECOMMENDATION

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

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

OUTCOME

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

BACKGROUND

The City of San Jose is currently in litigation with the San Jose Police Officers' Association (SJPOA), the San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230), and other employee and retiree groups over the pension reform ballot measure known as Measure B. Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for budget stability and to provide certainty to the City's workforce, the City Council directed the City Administration to make any and all reasonable efforts to reach and implement a settlement this year.

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

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

In summary, the Alternative Pension Reform Settlement Framework will:

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

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

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

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

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

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

ANALYSIS

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

Tripartite Retirement Memorandum of Agreement

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

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

Revised Tier 2

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

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

Pension Formula Accrual Rate

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

Maximum Benefit

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

Final Compensation

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

Revised Tier 2 **Minimum Service**
(cont'd)

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

Normal Age of Retirement

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

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

Retiree Cost of Living Adjustment (COLA)

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

No Retroactive Pension Increases or Decreases

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

Current Tier 2 Employees

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

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

Vesting Language

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

Cost Sharing

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

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

Revised Tier 2
(cont'd)

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

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

Disability Benefits

Service Connected

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

Non-Service Connected

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

Survivorship Benefits

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

Rehired Employees/New Hires From Outside Agencies

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

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

Revised Tier 2 **Service Credit Purchases**
(cont'd)

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

Actuarial Assumptions

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

Tier 2 Costing

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

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

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

Retiree
Healthcare

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

Voluntary Employee Beneficiary Association (VEBA)

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

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

Retiree
Healthcare
(cont'd)

New Lowest Cost Medical Plan

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

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

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

Tier 1 Opt-Out

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

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

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

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

**Retiree
Healthcare
(cont'd)**

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

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

Medicare Part A and B Enrollment

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

Retiree Healthcare In-Lieu Premium Credit

At the beginning of each plan year, a qualified retiree may choose to forego the defined benefit retiree healthcare plan and instead receive a 25% credit for the monthly premium of the lowest cost healthcare plan and dental plan. This credit may only be used for future City retiree healthcare premiums. Retirees may choose this option at the beginning of the plan year or upon a qualifying event. Retirees must verify dependent enrollment on an annual basis if they are receiving a credit for any tier other than single.

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

Catastrophic Disability Healthcare Program (CDHP)

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

30 Year Fresh Start Amortization

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

**Retiree
Healthcare
(cont'd)**

Retiree Healthcare Costing

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

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

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

**Disability
Definition
and Process**

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

Disability Process Deadlines

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

Disability Hearing Process

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

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

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

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

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

Administrative Law Judge (ALJ)

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

Modified Duty (SJPOA – Article 39)

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

Workers' Compensation Reform

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

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

**Supplement
Retiree Benefit
Reserve
(SRBR)**

The elimination of the SRBR will continue.

Guaranteed Purchasing Power (GPP)

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all current and future Tier 1 retirees, but the GPP will be applied prospectively after its implementation. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective the date of the retiree's retirement.

**Supplemental
Retiree Benefit
Reserve
(SRBR)
(cont'd)**

A retiree's pension benefit will be recalculated annually to determine if the allowance has kept up with inflation per the CPI-U. The actual benefit will be compared to what would have been required to maintain the same purchasing power at the time of retirement. If the benefit for Tier 1 retirees falls below 75%, a separate check will be issued to make up the difference, beginning in February 2016.

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

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

SRBR Costing

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

**Memorandum
of Agreement**

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

**Attorneys'
Fees**

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

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

Quo Warranto

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

Quo Warranto
(cont'd)

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

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

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

EVALUATION AND FOLLOW-UP

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

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

PUBLIC OUTREACH/INTEREST

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

July 24, 2015

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

Page 14 of 14

COORDINATION

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

COST SUMMARY/IMPLICATIONS

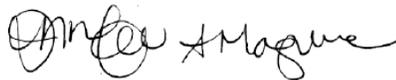
Appropriation actions in the amount of \$1.5 million, funded from the Fiscal Reform Plan Implementation Reserve, are recommended as part of this memorandum to pay attorney's fees related to the settlement of Measure B. The cost/savings estimates of each element of the framework are noted above and in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

CEQA

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



JENNIFER SCHEMBRI
Director of Employee Relations



JENNIFER A. MAGUIRE
Senior Deputy City Manager / Budget Director

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

Attachment A – Alternative Pension Reform Settlement Framework Agreement

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

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

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

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

(Evidence Code Section 1152)

Settlement Discussion Framework Language

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

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

MARCH 11th LETTER

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

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

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

Retirement Memorandum of Agreement

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

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

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

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

- a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) or 2.0%, whichever is lower
 - b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
13. Disability Benefit (Tier 2)
- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to the greater of:
 - i. 50% of final compensation;
 - ii. A service retirement allowance, if he or she qualified for such;
 - iii. An actuarially reduced factor, as determined by the plan's actuary, for each quarter year that his or her service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not qualified for a service retirement.
 - b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
 - i. If less than age 50: 1.8% per year of service; or
 - ii. If older than age 50: The amount of service pension benefit as calculated based upon the service pension formula.
14. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.
15. Tier 2 members will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving

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

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

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

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

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

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

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

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

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

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

Disability Definition and Process

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

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

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

7. Administrative law judge

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

8. Modified Duty (POA – Article 39)

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

9. Worker's Compensation Reform

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

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

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

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR
 - a. The funds credited to the SRBR will continue to be credited to the Police and Fire Department Retirement Plan to pay for pension benefits
2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement
 - a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.

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

Memoranda of Agreement (MOA)

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

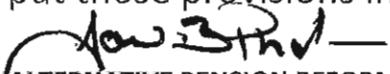
Attorney's Fees

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

Implementation Timeline

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

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



ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

July 15, 2015- 9:00PM

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ST 7/15/15



July 23, 2015

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

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

Dear Ms. Schembri:

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

■ Benefit formula based on City service:

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

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

■ Provide the following ancillary benefits:

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

Analysis

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

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

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



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

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



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

Assumptions

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

* * *

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'John E. Bartel'.

John E. Bartel
President

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

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July 23, 2015

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

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

Dear Ms. Schembri:

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

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



Analysis – Funding Valuation Basis

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

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

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

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

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

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

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

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



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

Analysis – GASB Valuation Basis

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

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

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

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

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

Assumptions

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

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

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

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

* * *

Jennifer Schembri
July 23, 2015
Page 4



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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'John E. Bartel'.

John E. Bartel
President

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

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San Jose Police & Fire Retiree Medical Plan

City Contribution Projections

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

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

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



July 23, 2015

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

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

Dear Ms. Schembri:

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

Analysis

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

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

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

Assumptions

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

* * *

Jennifer Schembri
July 23, 2015
Page 2



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

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

Sincerely,

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John E. Bartel
President

c: Cathy Wandro, Bartel Associates
Marilyn Oliver, Bartel Associates
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EXHIBIT 3



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: August 17, 2015

Approved

Date

8/17/15

SUPPLEMENTAL

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

REASON FOR SUPPLEMENTAL

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

BACKGROUND

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

ANALYSIS

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

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

HONORABLE MAYOR AND CITY COUNCIL

August 17, 2015

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

Page 2

which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following: (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework to which the parties mutually agree. The ballot measure will go to voters in November 2016. Once the parties mutually agree on language, POA and IAFF agree to endorse the ballot measure. Please refer to Attachment A – Addendum #1 for the agreement.

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

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

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

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



Jennifer Schembri
Director of Employee Relations

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

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

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

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

BETWEEN
THE CITY OF SAN JOSE
AND

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

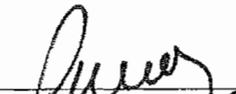
The POA and IAFF, Local 230 agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, POA and IAFF shall endorse the ballot measure.

FOR THE CITY:

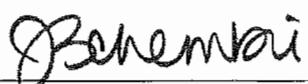
FOR THE UNIONS:



Norberto Dueñas
City Manager
8/14/15
Date



Paul Kelly
President, SJPOA
8/14/15
Date



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



James Gonzalez
Vice President, SJPOA
Date



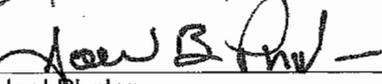
Edgardo Garcia
Assistant Chief of Police
8/14/15
Date



Gregg Adam
SJPOA Counsel
8/14/15
Date



Charles Sakai
Labor Consultant
8/14/15
Date



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

Sean Kaldor
Vice President, IAFF, Local 230
Date

Christopher Platten
Legal Counsel, IAFF, Local 230
Date



Tom Saggau
SJPOA/IAFF, Local 230 Consultant
8.14.15
Date

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

BETWEEN
THE CITY OF SAN JOSE
AND

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

PROPOSED QUO WARRANTO IMPLEMENTATION PLAN, AUGUST 14, 2015

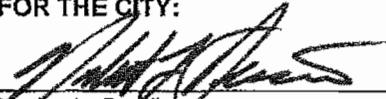
As agreed upon by the City, the San Jose Police Officers' Association and the International Association of Firefighters, Local 230, the proposed quo warranto implementation plan shall be followed by the parties in the manner prescribed below.

Step	Time	Action
1	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement • Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith • Non-precedential for any purpose
2	Immediately after #1	Parties ask for a stay in appellate proceedings (Lucas ruling). Local 230 will also ask for a stay in the PERB proceedings until December 31, 2015. If Step 8 has occurred and the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
3	Immediately after #1	Begin drafting ordinances and Tripartite Retirement MOA. Begin identifying ordinances implemented as a result of Measure B.
4	Immediately after #1	Local 230 intervenes as necessary/indispensable party in POA quo warranto case, without objection from the City, which may require seeking permission from the Attorney General.
5	Immediately after #1	Use POA case to offer a proposed stipulation to the Judge staying the implementation of Measure B pending further proceedings outlined below, which may require coordination with the Attorney General.
6	Immediately after #1	Parties negotiate charter language, pursuant to Addendum #1, simultaneous with agreement on stipulated facts, order and judgment.
7	Simultaneous with #6	Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in quo warranto case Outline of stipulated facts and findings: <ul style="list-style-type: none"> • history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation; • changes to the proposed ballot language, including post-impasse changes; • tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations—as described on pages 3-4 of Attorney General opinion No. 12-605.

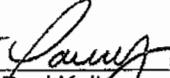
		<ul style="list-style-type: none"> • language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue); • the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable; • the desirability of finding a solution that is collaborative • financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable; • Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith. • Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate. • Agreement that Resolution No. 76158 shall be null and void. • Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans. • Stipulated Judgment shall reflect that Measure B shall be invalidated
8	Upon completion of #6 and #7	Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
9	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> • Formally adopt ordinances to implement Settlement Framework and replace Measure B. • All parties dismiss/withdraw all complaints, unfair practice charges, etc.
10	January 2016	Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Addendum #1 to Settlement Framework) to be completed by July 2016
11		POA and Local 230 agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
12	Immediately upon: (1) federated unions failing to reach pension settlement; (2) retirees not settling their litigation; or (3) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework

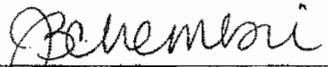
FOR THE CITY:

FOR THE UNION:

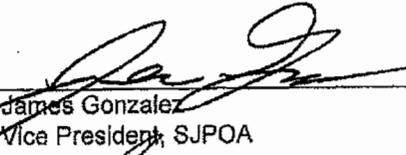

Norberto Duñias
City Manager

8/17/15
Date


Paul Kelly
President, SJPOA

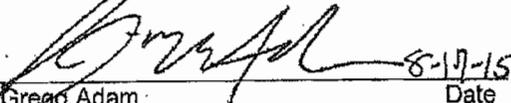

Jennifer Schembri
Director of Employee Relations

8/17/15
Date


James Gonzalez
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8-17-15
Date

Charles Sakai
Labor Consultant

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President, IAFF, Local 230

8/17/15
Date


Sean Kaldor
Vice President, IAFF, Local 230

Date

Christopher Platten
Legal Counsel, IAFF, Local 230

Date


Tom Saggau
SJPOA/IAFF, Local 230 Consultant

Date

EXHIBIT 4

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

BETWEEN
THE CITY OF SAN JOSE
AND

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

PROPOSED QUO WARRANTO IMPLEMENTATION PLAN, AUGUST 14, 2015

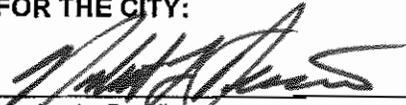
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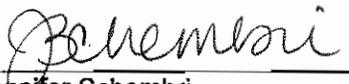
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FOR THE CITY:

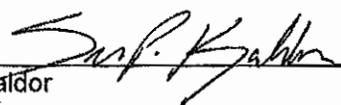
FOR THE UNION:

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

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

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

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


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 Sean Kaldor
 Vice President, IAFF, Local 230

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


 _____ Date _____
 Tom Saggau
 SJPOA/IAFF, Local 230 Consultant

EXHIBIT 5



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 25, 2015

The Council of the City of San José convened in Regular Session at 9:06 a.m. in the Council Chamber at City Hall.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:12 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54957 with respect to Public Employment/Public Employee Recruitment/Appointment: Title: City Auditor; Name: Sharon Erickson. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) IAFF Local 230 v. City of San José; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-969-M. Amount of Money or Other Relief Sought: Damages According to Proof. (2) IFPTE Local 21 v. City of San José; Names of Parties Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages according to proof. (3) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (4) OE#3 v. City of San José; Names of Parties Involved: Operating

CLOSED SESSION (Cont'd.)

Engineers Local Union No. 3, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-900-M. (5) San José Police Officers' Association v. City, et al; Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (6) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (7) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (9) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (10) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) People of the State of California, et al. v. City of San José, et al. Names of Parties Involved: The People of the State of California ex rel, San José Police Officers' Association, City of San José, City Council of San José; Court: Superior Court of the State of California for the County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint in Quo Warranto. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Designee Jennifer Schembri; Director of Employee Relations; Employee Organizations: (1) Association of Building,

CLOSED SESSION (Cont'd.)

Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150. (D) to confer with Legal Counsel pertaining to the Successor Agency to the Redevelopment Agency of the City of San José due to initiation of litigation pursuant to subsection (d)(1) of Section 54956.9 of the Government Code in one (1) matter.

By unanimous consent, Council recessed from the Closed Session at 10:55 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chamber.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio (1:46 p.m.), Peralez, Rocha, Liccardo.

Absent: Council Members - All Present.

INVOCATION

Aba Beza Gedifew, the Mekane Rama St. Gabriel Cathedral of the Ethiopian Orthodox Church offered the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

ORDERS OF THE DAY

Heard after Ceremonial Items.

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Chappie Jones and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 9.1 deferred to September 22, 2015. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring August 26, 2015 as, “Women’s Equality Day,” in the City of San José. (Herrera)

Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Member Magdalena Carrasco recognized August 26, 2015 as “Women’s Equality Day” in San José.

**1.2 Presentation of a commendation to Tim Quigley, outgoing president of the San José-Dublin Sister Cities Program for his many accomplishments during his three year term as president. (Mayor)
(Rules Committee referral 8/19/15)**

Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Kalra, Khamis and Peralez recognized and commended Tim Quigley.

**1.3 Presentation of a commendation to John Boncher, CEO of Cupertino Electric Inc. for their philanthropy and community impact to San José residents.
(Carrasco/Peralez)
(Rules Committee referral 8/19/15)**

Mayor Sam Liccardo, Council Member Magdalena Carrasco and Council Member Raul Peralez recognized and commended John Boncher, CEO of Cupertino Electric Inc.

CONSENT CALENDAR

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Johnny Khamis and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0)

2.1 Approval of minutes.

- (a) **Regular Minutes of April 07, 2015.**
 - (b) **Regular Minutes of April 14, 2015.**
 - (c) **Study Session Minutes on the Medical Marijuana Program of April 20, 2015.**
 - (d) **Regular Minutes of April 21, 2015.**
 - (e) **Joint San José/Santa Clara Valley Water District Minutes of April 27, 2015.**
 - (f) **Regular Minutes of April 28, 2015.**
- CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.**

Documents Filed: (1) The Regular Minutes dated April 07, 2015, April 14, 2015, April 21, 2015 and April 28, 2015. (2) The Study Session Minutes on the Medical Marijuana Program dated April 20, 2015. (3) The Joint San José/Santa Clara Valley Water District Minutes dated April 27, 2015.

Action: The City Council Minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29601 – Amending Title 17 of the San José Municipal Code by adding Chapter 17.86 to specify requirements for solar energy systems and to provide an expedited, streamlined permitting process for small residential rooftop solar systems. CEQA: Exempt, Guidelines Section 15268. Ministerial Projects. File No. PP15-073.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29601 executed on November 9, 2015, submitted by the City Clerk.

Action: Ordinance No. 29601 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of August 5, 2015. (Mayor)**
CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: The Rules and Open Government Committee Report of August 5, 2015.

Action: The Rules and Open Government Committee Report dated August 5, 2015 was approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.5 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Adopt resolutions:

(a) Authorizing the Director of Finance to negotiate and execute the following agreements with MuniServices LLC, a Delaware Limited Liability Company (“MuniServices”) to provide:

(1) Sales and Use Tax revenue enhancement services and data analysis for the term of July 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$412,000, with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council’s annual appropriation of funds.

(2) Telephone Line Tax, Utility Users Tax and Franchise Fee compliance services for the term of July 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$70,000, with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council’s annual appropriation of funds.

(b) Authorizing MuniServices to examine all Sales and Use Tax records of the California State Board of Equalization for tax collection purposes and other governmental functions of the City of San José.

**CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)
(Deferred from 6/16/15 – Item 2.13 and 8/4/15 – Item 2.7)**

Action: Deferred to September 01, 2015 per Administration.

2.8 Approve a Second Amendment to the ALD Development Corp. dba Airport Lounge Development, Inc. (“ALD”) Concession Agreement to extend the term to January 31, 2019 with total annual revenue to the City of approximately \$76,000. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for the same use. (Airport)

Documents Filed: Memorandum from Director of Aviation Services Kimberly J. Becker, dated August 3, 2015, recommending approval of a second amendment.

Action: A Second Amendment to the ALD Development Corp. dba Airport Lounge Development, Inc. (“ALD”) Concession Agreement to extend the term to January 31, 2019 with total annual revenue to the City of approximately \$76,000 was approved. (11-0.)

- 2.9 As recommended by the Rules and Open Government Committee on August 12, 2015, appoint Council Member Magdalena Carrasco to the San José Police Activities League Board. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)
[Rules Committee referral 8/12/15 – Item F(1)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: Council Member Magdalena Carrasco was appointed to the San José Police Activities League Board. (11-0.)

- 2.10 As recommended by the Rules and Open Government Committee on August 12, 2015, approve the receipt of gifts received in official capacity in accordance with San José Municipal Code Section 12.08.040. CEQA: Exempt, Guidelines Section 15268. Ministerial Projects. File No. PP15-073. (Jones)
[Rules Committee referral 8/12/15 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: The receipt of gifts received in official capacity in accordance with San José Municipal Code Section 12.08.040 for Council Member Chappie Jones was approved. (11-0.)

- 2.11 As recommended by the Rules and Open Government Committee on August 12, 2015, approve a grant of \$1,000 to the Martin-Fontana Parks Association to be paid from the budgeted District 10 SAP Center at San José allocation, which is funded by the Arena Community Fund City-Wide appropriation. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Khamis)
[Rules Committee referral 8/12/15 – Item G(3)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: A grant of \$1,000 to the Martin-Fontana Parks Association to be paid from the budgeted District 10 SAP Center at San José allocation, which is funded by the Arena Community Fund City-Wide appropriation was approved. (11-0.)

- 2.12 As recommended by the Rules and Open Government Committee on August 12, 2015, approve a grant of \$1,000 to Branham High School for their Sports Booster Club to support student programs and activities, which is funded by the Arena Community Fund Citywide appropriation. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Rocha)
[Rules Committee referral 8/12/15 – Item G(4)]**

2.12 (Cont'd.)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: A grant of \$1,000 to Branham High School for their Sports Booster Club to support student programs and activities, which is funded by the Arena Community Fund Citywide appropriation was approved. (11-0.)

- 2.13 As recommended by the Rules and Open Government Committee on August 19, 2015, adopt a resolution in support of the Fix Our Roads Coalition's goals for the California State Transportation Special Session. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)
[Rules Committee referral 8/19/15 – Item G(6)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 21, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 77502, entitled: "A Resolution of the Council of the City of San José Urging the State of California to Provide New Sustainable Funding For State and Local Transportation Infrastructure", was adopted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.3 Discuss the policy alternatives for amending Council Policy 2-1 to establish guidelines for the permanent display of the POW/MIA (Prisoner-of-War/Missing-in-Action) flag at City Hall's West Plaza and direct City staff to amend the policy based on the selected alternative. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves not changes to the physical environment. (Public Works)
(Referred from 6/23/15 – Item 3.24 and Deferred from 8/11/15 – Item 3.3)**

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Raul Peralez and Chappie Jones, dated August 21, 2015, recommending approval of the Staff recommendations to permanently display the POW/MIA Flag below the USA Flag at City Hall 365 days (Option One). (2) Memorandum from Director of Public Works Barry Ng, dated August 13, 2015, recommending discussing the policy alternatives for amending Council Policy 2-1. (3) Staff presentation dated August 25, 2015 summarizing Displaying the POW/MIA Flag.

Motion: Vice Mayor Rose Herrera moved approval of the memorandum she cosigned with Mayor Sam Liccardo and Council Members Raul Peralez and Chappie Jones described below in "Action." Council Member Chappie Jones seconded the motion.

3.3 (Cont'd.)

Director of Public Works Barry Ng presented the Staff report and responded to Council questions.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Expressing support to the motion on the floor were Dave Saunders, Vietnam Veterans of America; Vietnam J.D. Duenas, Vet Help Vet Brotherhood; Richard McCoy, Francis McVey, United Veterans Council; Frank Chavez, Michael Kelly, Veterans Supportive Services Agency; Jerry Arnold, Disabled American Veterans; Abel Ramos, American Legion Post 858 and James McMann, American Legion Willow Glen Post 318.

Council Members Peralez, Jones and Manh Nguyen expressed support to the motion on the floor.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Council Members Peralez and Jones, dated August 21, 2015, was approved, approving the Staff recommendation to permanently display the POW/MIA flag below the USA Flag at City Hall year round at 365 days. (11-0.)

3.4 Interview applicants and consider an appointment to fill one (1) Attorney-at-Law representative with an unexpired term ending November 30, 2018 on the Civil Service Commission. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated August 14, 2015, recommending interviewing the applicant and consideration of an appointment. (2) Memorandum from City Attorney Richard Doyle, dated August 13, 2015, providing background on the Civil Service Commission Application for an Attorney member.

Action: Sharon Hightower, Attorney-a-Law was interviewed by the Mayor and Council members and appointed to an unexpired term ending November 30, 2018. (11-0.)

3.5 (a) Adopt a resolution to:

- (1) Approve the terms of the Alternative Pension Reform Settlement Framework Agreement between the City and the San José Police Officers' Association (SJPOA) and San José Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230).**
- (2) Authorize the City Manager to negotiate and execute a Tripartite Retirement Memorandum Agreement between the City, the SJPOA, and IAFF, Local 230.**

3.5 (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:

- (1) Establish a City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,500,000.**
- (2) Decrease the Fiscal Reform Plan Implementation Reserve in the amount of \$1,500,000.**

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

(Deferred from 8/11/15 – Item 3.4 and 8/18/15 – Item 3.4)

Documents Filed: (1) Memorandum from Council Member Donald Rocha, dated August 7, 2015, recommending the Council approve the Staff recommendations. (2) Memorandum from Director of Employee Relations Jennifer Schembri and Senior Deputy City Manager Jennifer A. Maguire, dated July 24, 2015, recommending approval of the Alternative Pension Reform Settlement Framework Agreement, the memorandum of agreement and appropriation ordinance amendments. (3) Supplemental memorandum from Director of Employee Relations Jennifer Schembri, dated August 17, 2015, providing additional information. (4) Presentation Slides from the Office of the Mayor dated August 25, 2015. (5) Staff presentation dated August 25, 2015 describing the San José Police Officers' Association and International Association of Fire Fighters, Local 230 Alternative Pension Reform Settlement Framework.

Director of Employee Relations Jennifer Schembri offered the report.

Mayor Sam Liccardo opened the floor for public testimony

Public Comments: Speaking in support to the settlement agreement were Paul Kelly, James Gonzales, Police Officers' Association; Sean Kaldor, San José Fire Fighters Local 230 and Ross Signorino.

Mayor Sam Liccardo provided a brief presentation depicting estimated annual City retirement contributions projects for Police and Fire and Police Officer gross pay comparisons for Fiscal Year 2016-2017.

First Motion: Council Member Chappie Jones moved approval of the Staff recommendations including the Alternative Pension Reform Settlement Framework Agreement. Vice Mayor Rose Herrera seconded the motion.

Council Member Pierluigi Oliverio expressed opposition to the first motion on the floor.

Council discussion ensued.

Second Motion: Council Member Chappie Jones moved approved of the two supplemental memoranda. Vice Mayor Rose Herrera seconded the motion.

Council Member Pierluigi Oliverio expressed opposition to the second motion on the floor.

3.5 (Cont'd.)

Action: On a call for the question, both motions carried, Resolution No. 77503, entitled: "A Resolution of the Council of the City of San José Approving the Terms of the Alternative Pension Reform Settlement Framework Agreement With the San José Police Officers' Association and International Association of Fire Fighters, Local 230 and Authorizing the City Manager to Negotiate and Execute a Tripartite Retirement Memorandum of Agreement" and Ordinance No. 29609, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund for the Citywide Measure B Settlement; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-1. Noes: Oliverio.)

- 3.6 (a) Adopt a resolution approving the terms of a collective bargaining agreement between the City and the San José Police Officers' Association and authorizing the City Manager to execute an agreement with a term effective upon execution of the agreement through December 31, 2016.**
- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:**
- (1) Increase the Personal Services appropriation to the Police Department in the amount of \$9,545,000.**
 - (2) Increase the Personal Services appropriation to the City Attorney's Office in the amount of \$20,000.**
 - (3) Decrease the Police Department Staffing/Operations Reserve in the amount of \$9,100,000.**
 - (4) Decrease the Salaries and Benefits Reserve in the amount of \$465,000.**
- CEQA: Not a Project, File No PP10-069(b), Personnel Related Decisions. (City Manager)**

Documents Filed: Memorandum from Director of Employee Relations Jennifer Schembri and Senior Deputy City Manager Jennifer A. Maguire, dated August 14, 2015, recommending adoption of a resolution and appropriation ordinance amendments.

Director of Employee Relations Jennifer Schembri presented a brief update.

Motion: Vice Mayor Rose Herrera moved approval of the Staff recommendations. Council Member Raul Peralez seconded the motion.

Council Member Pierluigi Oliverio expressed support to the motion on the floor.

Mayor Sam Liccardo opened the floor for public testimony

Public Comments: Shaunn Cartwright presented comments on the collective bargaining agreement between the City and the San José Police Officers' Association.

3.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 77504, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the San José Police Officers' Association with a Term Commencing Upon Execution of the Agreement to December 31, 2016" and Ordinance No. 29610, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund For the Personal Services Appropriations to the Police Department and the City Attorney's Office; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution directing the Interim Director of Housing to pursue steps necessary to acquire the Plaza Hotel located in San José at 96 South Almaden Boulevard ("Plaza Hotel") from the Successor Agency to the Redevelopment Agency of the City of San José (SARA), for housing the homeless, and return to City Council to obtain authorization to acquire. CEQA: Exempt, Guidelines Section 15301, Existing Facilities. (Housing)
(Deferred from 6/16/15 – Item 4.2, et al, and 8/11/15 – Item 4.1)**

Action: Deferred to September 22, 2015 per Administration.

- 4.2 (a) Adopt a resolution:**
- (1) Approving an early disbursement of the existing \$8,000,000 construction-permanent loan commitment, in the form of a land acquisition loan, of up to \$5,000,000 that will refinance an existing land acquisition loan in order to support development of the Second Street Studio Apartments, an affordable multifamily rental development offering permanent supportive housing for the homeless to be located at 1140 South Second Street at Keyes Street ("Development") and developed by a legal affiliate of First Community Housing Corporation ("FCH" or "Developer").**
 - (2) Approving an increase of up to a \$6,452,000 to the existing City Council-approved construction-permanent loan commitment of \$8,000,000, for a total of up to \$14,452,000 of Low and Moderate Income Housing Asset Funds to Developer.**
 - (3) Approving an increase of up to \$500,000 to the existing predevelopment loan.**

- 4.2 (b) **Adopt the following Appropriation Ordinance amendments in the Low and Moderate Housing Asset Fund (346):**
- (1) **Increase the appropriation to the Housing Department for Housing Loans and Grants in the amount of \$5,000,000.**
 - (2) **Decrease the Housing Project Reserve appropriation in the amount of \$5,000,000.**

CEQA: Mitigated Negative Declaration, File No. PDC07-086, adopted 8/26/2008. (Housing/City Manager)

Action: Deferred to September 15, 2015 per Administration.

- 4.3 **Adopt a resolution initiating proceedings and setting September 15, 2015 at 1:30 p.m., for City Council consideration of the reorganization of territory designated as Story No. 65, which involves the annexation to the City of San José of an approximately 0.52 gross acre of land located on the west side of East Hills Drive, approximately 250 feet easterly of Dale Drive, and the detachment of the same from the appropriate special districts, including Central Fire Protection, CO Lighting County Service, County Sanitation District 2-3, and Area No. 01 (Library Services) County Service. CEQA: Envision 2040 General Plan Final Program EIR (Resolution No. 76041). Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: City Council Action Request from Director of Planning, Building and Code Enforcement Harry Freitas, dated August 14, 2015, recommending adoption of a resolution.

Action: Upon motion by Council Member Johnny Khamis, seconded by Vice Mayor Rose Herrera and carried unanimously, Resolution No. 77505, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Story No. 65, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (11-0.)

- 4.4 (a) **Adopt an interim ordinance of the City of San Jose, as an urgency measure, establishing a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures and setting forth the findings to support (1) the need for the temporary moratorium; and (2) the need for the urgency measure.**
- (b) **Direct staff to refer to the Planning Commission for its review and recommendation, at its earliest possible regular meeting, a substantially similar ordinance establishing a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures.**

CEQA: Exempt, Guidelines Sections 15061(b)(3) No Significant Impact on the Environment and 15308 Actions by Regulatory Agencies for Protection of the Environment. (Housing/Planning, Building, and Code Enforcement)

4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Johnny Khamis, dated August 24, 2015, with direction to Staff. (2) Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas and Interim Director of Housing Jacky Morales-Ferrand, dated August 21, 2015, recommending adoption of an interim ordinance and direction to Staff. (3) Letter from Diana Castillo, Senior Attorney, Fair Housing Law Project, Law Foundation of Silicon Valley, dated August 24, 2015, regarding the Mobilehome Park Conversion Moratorium.

Director of Planning, Building and Code Enforcement Harry Freitas provided introductory remarks.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Speaking in support to the Mobilehome Park Conversion Moratorium were David Tripp, Phyllis Tripp, Winchester Ranch Mobilehome Park; Katharine Turner, Winchester Ranch; Diana Castillo, Law Foundation of Silicon Valley; Bill Baron, Eric Brandenburg, Brandenburg, Staedler and Moore; Shaunn Cartwright, Gary Smith, Millpond Mobilehome Park; Mike Connolly, Richard Lawrence, Gail Osmer, Lee Ellak, Davlyn Jones, Marylou Clark, Martha O'Connell, Phil Olmstead, Erik Schoennauer, Debbi Cosentino, Stan Soles, Chris Giangreco, Reverend C. Lynn Bailey, Robert Aguirre, Brian Darby, Giau Huynh Nguyen, Ross Signorino and Karen Carpenter.

Motion: Council Member Chappie Jones moved approval of the Staff recommendations. Vice Mayor Rose Herrera seconded the motion.

Council Member Johnny Khamis requested to amend the motion to include his memorandum dated August 24, 2015. Council Member Chappie Jones and Vice Mayor Rose Herrera accepted Part (c) of Council Member Johnny Khamis' memorandum: direct Staff to meet with the Mobile Home Park Owners and residents as necessary to prepare an "Opt-In; Stay in Business" alternative *to be included* within a proposed work plan for Council consideration.

Council discussion ensued.

Council Member Raul Peralez objected to the motion on the floor.

Substitute Motion: Council Member Raul Peralez moved approval of the Staff recommendations. Council Member Donald Rocha seconded the motion.

City Attorney Richard Doyle clarified that nine votes are needed for an urgency ordinance.

On a call for the question, the substitute motion failed. (7-4. Noes: Herrera, Jones, Khamis, Oliverio.)

4.4 (Cont'd.)

Action: On a call for the question, the original motion carried unanimously, Ordinance No. 29611, entitled: "An Interim Ordinance of the City of San José Establishing a Temporary Moratorium on the Conversion or Closure of Mobilehome Parks Pending the Review and Possible Amendment of Land Use Regulations Applicable to Such Conversions and Closures and Setting Forth Findings to Support Such Temporary Moratorium", was adopted. Staff was directed to meet with the Mobile Home Park Owners and residents as necessary to prepare an "Opt-In; Stay in Business" alternative to be included within a proposed work plan for Council consideration. (11-0.)

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 (a) Approve the acquisition of 226 Balbach by the City from the Successor Agency to the Redevelopment Agency of the City of San José for \$2,400,000 from the Low and Moderate Income Housing Asset Fund to that the Housing Department can acquire the site and determine an appropriate future affordable housing development.**
- (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:**
- (1) Increase the appropriation to the Housing Department for Housing Loans and Grants by \$2,410,000.**
 - (2) Decrease the Housing Project Reserve appropriation by \$2,410,000.**

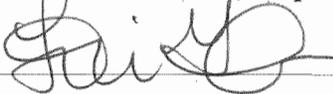
CEQA: Determination of Consistency with Downtown Strategy 2000 EIR (Resolution No. 72767). Council District 3. (Housing/City Manager)

Action: Deferred to September 22, 2015 per Orders of the Day.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:07 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC
City Clerk

smd/08-25-15 MIN

EXHIBIT 6

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

(Evidence Code Section 1152)

Settlement Discussion Framework Language

The City of San Jose, AFSCME, Local 101 (on behalf of its chapters, the Municipal Employees' Federation, the Confidential Employees' Organization), the Association of Engineers and Architects, the Association of Maintenance Supervisory Personnel, the City Association of Management Personnel, and the Operating Engineers, Local 3 ("the Litigants") have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The Litigants have reached the below framework for a tentative settlement of American Federation of State, County, and Municipal Employees v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-227864, Harris, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-12-CV-226570, Mukhar, et. Al. v. City of San Jose, Santa Clara County Superior Court, No. 1-12-CV-226574), International Federation of Professional and Technical Engineers vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-996-M, American Federation of State, County and Municipal Employees vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-924-M, Operating Engineers, Local 3 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-900-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.

Although the Association of Legal Professionals, the Association of Building, Mechanical, and Electrical Inspectors, and the International Brotherhood of Electrical Workers (“Non-Litigants”) are not plaintiffs in a legal challenge to Measure B, these bargaining units also agree to the settlement framework as listed below and will present this framework to their members for approval. Litigants and Non-Litigants will be referred to collectively as “The Parties”

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

Retirement Memorandum of Agreement

1. The Parties (the City of San Jose, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI), the Association of Engineers and Architects (AEA), the Association of Legal Professionals (ALP), the Association of Maintenance Supervisory Personnel (AMSP), the City Association of Management Personnel (CAMP), the Confidential Employees’ Organization (CEO), the International Brotherhood of Electrical Workers (IBEW), the Municipal Employees’ Federation (MEF), and the Operating Engineers, Local 3 (OE#3)) shall enter into a Retirement Memorandum of Agreement to memorialize all agreements related to retirement. The Retirement MOA shall expire June 30, 2025.
2. The Retirement MOA will be a binding agreement describing the terms of the final agreement between the parties (ABMEI, AEA, ALP, AMSP, CAMP,

CEO, IBEW, MEF and OE#3) and will be subject to any agreed-upon reopeners herein.

The current Tier 2 retirement plans for Federated employees will be modified as follows:

1. Pension benefit will be 2.0% per year of service
2. One year of service will be 2080 hours. Pensionable pay will be the same as Tier 1 employees.
3. Retirement Age
 - a. The eligible age for an unreduced pension benefit will be age 62
 - b. The eligible age for a reduced pension benefit will be age 55. The reduction for retirement before age 62 will be 5% per year, prorated to the closest month.
4. 70% cap
 - a. The maximum pension benefit will be 70% of an employee's final average salary
5. Three-year final average salary
6. A member is vested after 5 years of service
7. No retroactive defined benefit pension increases or decreases
 - a. Any such changes in retirement benefits will only be applied on a prospective basis.
8. No pension contribution holiday for the City or the employee
9. Final compensation means base pay actually paid to a member and shall not include premium pay or any other forms of additional compensation
10. Current Tier 2 Federated employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 18 (returning Tier 1).

- a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
11. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
 12. Tier 2 cost sharing
 - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
 - b. In the event an unfunded liability is determined to exist for the Federated Tier 2 retirement plan, Tier 2 employees will contribute toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between the employee and the employer.
 - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability.
 13. Cost of Living Adjustment (COLA)
 - a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) (“CPI”) or a back-loaded 2.0% COLA (as described below), whichever is lower. The back-loaded COLA shall be calculated as follows:
 - i. Service at retirement of 1-10 years: 1.25% per year
 - ii. Service at retirement of 11-20 years: 1.5% per year
 - iii. Service at retirement of 21-25 years: 1.75% per year
 - iv. Service at retirement of 26 years and above: 2.0% per year

- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
- c. Current Tier 2 employees as of the date of this agreement will receive an annual cost of living adjustment of the lower of CPI (as defined above) or 1.5% per year for service at retirement of 1-10 years. After 10 years of service, employees will receive an annual cost of living adjustment in retirement pursuant to Section 13(a) above.

14. Disability Benefit (Tier 2)

- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to:
 - i. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, with a minimum of 40% and a maximum of 70% of Final Compensation.
- b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
 - i. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, with a minimum of 20% and a maximum of 70% of Final Compensation.

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

16. Tier 2 members eligible for retirement will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members eligible for retirement will be provided with survivor benefits in the event of death before retirement. These benefits will

be the same as Tier 1 members but reduced to reflect the new 70% pension cap versus the current 75% pension cap.

17. Tier 2 members not eligible for retirement at the time of death will be provided with survivor benefits of a return of employee contributions, plus interest in the event of death before retirement
18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
 - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
 - b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRRA, regardless of tier, will be placed in Tier 1.
 - c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRRA will be placed in Tier 2.
19. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

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

1. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
2. New lowest cost medical plan
 - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members
 - b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
 - c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
 - d. Any changes to the "Floor" shall be by mutual agreement only.
3. Potential Tier 1 opt-out
 - a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare

plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily “opt out” of the current retiree medical plan. Those members who “opt out,” and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.

4. Continue enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers. The enrollment period for Medicare Parts A and B shall begin three months before the retiree’s 65th birthday, continue through the month of birth, and conclude three months after the retiree’s 65th birthday.
5. The current defined benefit retiree healthcare plan is modified to enable retired members to select an “in lieu” premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the “special enrollment” provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an “in lieu” premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the “in-lieu” premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or

survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

6. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit unsubsidized coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
7. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.
8. Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare.
9. All Tier 2A employees (except those represented by OE#3) will mandatorily be removed from the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
10. Tier 2A employees represented by OE#3, so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined

benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees represented by OE#3 who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees represented by OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.

11. All Tier 2B employees will be mandated to contribute 2% of base pay to the VEBA.
12. All Tier 2C employees will be automatically removed from the dental benefit plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
13. Members who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 14% of payroll, the City may decide to contribute a maximum of 14%.
14. The parties have been advised that the difference between the defined benefit contribution rate (7.5%) and the VEBA opt-out contribution rate (4.5%) will be taxable income.

15. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
16. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.
17. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member is eligible for Medicare (usually age 65).

- a. Qualifications - The member must not be eligible for an unreduced service retirement.
- b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
- c. Upon reaching Medicare eligibility, the benefit will cease
- d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
- e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

Disability Definition and Process

1. Reinstate the previous City definition for disability for all Federated employees.
2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code §3.28.1240
3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings.
6. Independent panel of experts appointed by 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications
 - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel.
 - b. Each member shall have a four-year term and meet the following minimum qualifications:
 - i. 10 years of practice after completion of residency
 - ii. Practicing or retired Board Certified physician
 - iii. Not a prior or current City employee
 - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
 - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
 - vi. Varying medical experience
 - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
 - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

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

7. Administrative law judge

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

8. Workers' Compensation Offset

- a. The workers' compensation offset currently in place for Federated Plan participants will continue for Tier 1 and Tier 2.

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR

- a. The funds credited to the SRBR will continue to be credited to the Federated City Employees' Retirement System to pay for pension benefits

2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to

maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.
- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 68.
- e. In the event of litigation by a retired member or members of the Federated bargaining units challenging this provision of the Settlement Agreement against a Federated bargaining unit, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend the Federated bargaining unit with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the

attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

Attorney's Fees

1. \$1.257 million to the litigants (AFSCME-MEF and CEO; IFPTE Local 21-AEA, AMSP and CAMP; and OE#3) within 30 days of the settlement framework being approved by Council in open session.
 - a. AFSCME (MEF and CEO) shall not be entitled to any more in Attorneys' Fees and expenses related to the litigation and resolution of Measure B, and are not entitled to final and binding arbitration regarding Attorney's Fees.
 - b. The City and IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B.
 - i. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
 - ii. The City shall pay the arbitrator's fees and costs, including court reporter
 - iii. The parties agree that the issue presented shall be: Whether IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 are entitled, under binding statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation and resolution of Measure B? If so, in what amounts?

Quo Warranto/Ballot Measure Implementation Plan

1. The Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3) agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, all the Federated bargaining units shall endorse the ballot measure.
2. As agreed upon by the City and the Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3), the proposed quo warranto implementation plan shall be followed by the parties in the manner described below.

Step	Time	Action
1.	Immediately upon signature of the Framework by the litigants	Parties ask for a stay in appellate proceedings (Lucas ruling). AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP), and OE#3 will also ask for a stay in the PERB proceedings until March 31, 2016. So long as the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
2.	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement

		<ul style="list-style-type: none"> • Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith • Non-precedential for any purpose
3.	Immediately after #2	Begin drafting ordinances. Begin identifying ordinances implemented as a result of Measure B.
5.	Immediately after #2	Parties negotiate charter language, pursuant to Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan," simultaneous with agreement on stipulated facts, order and judgment.
6.	Simultaneous with #5	<p>Although the Federated Bargaining Units are not parties to the pending litigation in Santa Clara Superior Court Case No. 1-13-CV-245503 ("Quo Warranto Case"), the Federated Bargaining Units will support the City and SJPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only)</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> • history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation; • changes to the proposed ballot language, including post-impasse changes; • tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations—as described on pages 3-4 of Attorney General opinion No. 12-605. • language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue); • the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be <i>universally applicable</i>; • the desirability of finding a solution that is collaborative • financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable; • Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

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		<ul style="list-style-type: none"> Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate. Agreement that Resolution No. 76158 shall be null and void. Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans. <p>Stipulated Judgment shall reflect that Measure B shall be invalidated</p>
7.	Upon completion of #5 and #6	<ul style="list-style-type: none"> Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
8.	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> Formally adopt ordinances to implement Settlement Framework and replace Measure B. At such time as the judgment becomes final and the Quo Warranto issues, or the voters pass a substitute measure supported by the Parties, all parties dismiss/withdraw all complaints, unfair practice charges, etc.
9.	January 2016	<ul style="list-style-type: none"> Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan) to be completed by July 2016
10.	Third Party Litigation	All Federated bargaining units (except ALP) agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
11.	Immediately upon: (1) retirees not settling their litigation; or (2) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework agreed to by the Federated bargaining units for placement on the ballot in November 2016. The Parties will begin this process immediately in January 2016 if either the retirees have not settled or the quo warranto process has not been completed.

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by the Federated bargaining units.

The Federated Bargaining Units and the City shall in good faith work toward implementing this agreement, and neither party shall take any action to undermine or subvert the terms and benefits provided by this agreement.

 11/23/15

QEM 11/23/15
CJS 11/23/15

MB 11/23/15
rlp 11/23/15
JWJ 11/23/15
yae 11/23/15
 11-23-15

Mano Mercedo
for JS 11/23/15
VMM 11/23/15
LC 11/23/15
 12/4/15

Jf.C. 12-3-15
VMT 12-3-15
SV 12/4/15
TCF 12/14/15 ABMEI

EXHIBIT 7



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: December 4, 2015

Approved

Date

12/4/15

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

RECOMMENDATION

(a) Adopt a resolution to:

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

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

OUTCOME

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

BACKGROUND

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

Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for budget stability and to provide certainty to the City's workforce, the City Council directed the City Administration to make any and all reasonable efforts to reach and implement a settlement this year.

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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**Retirement
Memorandum
of Agreement**

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

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

Revised Tier 2

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

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

Pension Formula Accrual Rate

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

Maximum Benefit

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

Final Compensation

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

Minimum Service

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

Normal Age of Retirement

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

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

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Revised Tier 2
(cont'd)

Retiree Cost of Living Adjustment (COLA)

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

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

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

No Retroactive Pension Increases or Decreases

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

Current Tier 2 Employees

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

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

Vesting Language

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

**Revised Tier 2
(cont'd)**

Cost Sharing

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

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

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

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

Disability Benefits

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

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

Survivorship Benefits

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

Revised Tier 2
(cont'd)

Rehired Employees/New Hires From Outside Agencies

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

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

Service Credit Purchases

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

Tier 2 Costing

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

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

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

Retiree
Healthcare

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

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Retiree
Healthcare
(cont'd)

Voluntary Employee Beneficiary Association (VEBA)

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

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

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

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

New Lowest Cost Medical Plan

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

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

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

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**Retiree
Healthcare
(cont'd)**

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

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

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

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

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

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

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**Retiree
Healthcare
(cont'd)**

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

Medicare Part A and B Enrollment

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

Retiree Healthcare In-Lieu Premium Credit

At the beginning of each plan year, a qualified retiree may choose to forego the defined benefit retiree healthcare plan and instead receive a 25% credit for the monthly premium of the lowest cost healthcare plan and dental plan. This credit may only be used for future City retiree healthcare premiums. Retirees may choose this option at the beginning of the plan year or upon a qualifying event. Retirees must verify dependent enrollment on an annual basis if they are receiving a credit for any tier other than single.

Accumulated credits that are never used by the retiree or survivor/beneficiary are forfeited. There is no cap on the amount of credit accumulated, and at no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation.

Members in the VEBA are not eligible for this in-lieu benefit.

Catastrophic Disability Healthcare Program (CDHP)

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

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**Retiree
Healthcare
(cont'd)**

Unrepresented Employees in Unit 99 and Units 81/82

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

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

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

Retiree Healthcare Costing

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

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

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

**Disability
Definition
and Process**

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

Disability Process Deadlines

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

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Disability
Definition
and Process
(cont'd)

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

Disability Hearing Process

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

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

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

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

Administrative Law Judge (ALJ)

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

Supplement
Retiree Benefit
Reserve (SRBR)

The elimination of the SRBR will continue.

Guaranteed Purchasing Power (GPP)

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all current and future Tier 1 retirees, but the GPP will be applied prospectively after its implementation. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective the date of the retiree's retirement.

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Supplement
Retiree Benefit
Reserve (SRBR)
(cont'd)

A retiree's pension benefit will be recalculated annually to determine if the allowance has kept up with inflation per the CPI-U. The actual benefit will be compared to what would have been required to maintain the same purchasing power at the time of retirement. If the benefit for Tier 1 retirees falls below 75%, a separate check will be issued to make up the difference, beginning in February 2016. The number of Tier 1 retirees who currently fall below 75% purchasing power is approximately 68.

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

SRBR Costing

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

Attorneys' Fees

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

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

Quo Warranto/
Ballot Measure
Implementation
Plan

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

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

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

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

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

EVALUATION AND FOLLOW-UP

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

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

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

PUBLIC OUTREACH/INTEREST

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

COORDINATION

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

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COST SUMMARY/IMPLICATIONS

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

BUDGET REFERENCE

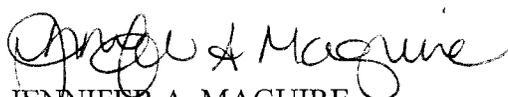
The table below identifies the fund and appropriations to fund the actions recommended as part of this memorandum.

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

CEQA

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


 JENNIFER SCHEMBRI
 Director of Employee Relations


 JENNIFER A. MAGUIRE
 Senior Deputy City Manager/
 Budget Director

HONORABLE MAYOR AND CITY COUNCIL

December 4, 2015

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

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Attachment A – Federated Alternative Pension Reform Settlement Framework Agreement

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

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

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

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

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

(Evidence Code Section 1152)

Settlement Discussion Framework Language

The City of San Jose, AFSCME, Local 101 (on behalf of its chapters, the Municipal Employees' Federation, the Confidential Employees' Organization), the Association of Engineers and Architects, the Association of Maintenance Supervisory Personnel, the City Association of Management Personnel, and the Operating Engineers, Local 3 ("the Litigants") have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The Litigants have reached the below framework for a tentative settlement of American Federation of State, County, and Municipal Employees v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-227864, Harris, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-12-CV-226570, Mukhar, et. Al. v. City of San Jose, Santa Clara County Superior Court, No. 1-12-CV-226574), International Federation of Professional and Technical Engineers vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-996-M, American Federation of State, County and Municipal Employees vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-924-M, Operating Engineers, Local 3 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-900-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.

Although the Association of Legal Professionals, the Association of Building, Mechanical, and Electrical Inspectors, and the International Brotherhood of Electrical Workers ("Non-Litigants") are not plaintiffs in a legal challenge to Measure B, these bargaining units also agree to the settlement framework as listed below and will present this framework to their members for approval. Litigants and Non-Litigants will be referred to collectively as "The Parties"

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

Retirement Memorandum of Agreement

1. The Parties (the City of San Jose, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI), the Association of Engineers and Architects (AEA), the Association of Legal Professionals (ALP), the Association of Maintenance Supervisory Personnel (AMSP), the City Association of Management Personnel (CAMP), the Confidential Employees' Organization (CEO), the International Brotherhood of Electrical Workers (IBEW), the Municipal Employees' Federation (MEF), and the Operating Engineers, Local 3 (OE#3)) shall enter into a Retirement Memorandum of Agreement to memorialize all agreements related to retirement. The Retirement MOA shall expire June 30, 2025.
2. The Retirement MOA will be a binding agreement describing the terms of the final agreement between the parties (ABMEI, AEA, ALP, AMSP, CAMP,

CEO, IBEW, MEF and OE#3) and will be subject to any agreed-upon reopeners herein.

The current Tier 2 retirement plans for Federated employees will be modified as follows:

1. Pension benefit will be 2.0% per year of service
2. One year of service will be 2080 hours. Pensionable pay will be the same as Tier 1 employees.
3. Retirement Age
 - a. The eligible age for an unreduced pension benefit will be age 62
 - b. The eligible age for a reduced pension benefit will be age 55. The reduction for retirement before age 62 will be 5% per year, prorated to the closest month.
4. 70% cap
 - a. The maximum pension benefit will be 70% of an employee's final average salary
5. Three-year final average salary
6. A member is vested after 5 years of service
7. No retroactive defined benefit pension increases or decreases
 - a. Any such changes in retirement benefits will only be applied on a prospective basis.
8. No pension contribution holiday for the City or the employee
9. Final compensation means base pay actually paid to a member and shall not include premium pay or any other forms of additional compensation
10. Current Tier 2 Federated employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 18 (returning Tier 1).

- a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
11. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
 12. Tier 2 cost sharing
 - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
 - b. In the event an unfunded liability is determined to exist for the Federated Tier 2 retirement plan, Tier 2 employees will contribute toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between the employee and the employer.
 - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability.
 13. Cost of Living Adjustment (COLA)
 - a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) (“CPI”) or a back-loaded 2.0% COLA (as described below), whichever is lower. The back-loaded COLA shall be calculated as follows:
 - i. Service at retirement of 1-10 years: 1.25% per year
 - ii. Service at retirement of 11-20 years: 1.5% per year
 - iii. Service at retirement of 21-25 years: 1.75% per year
 - iv. Service at retirement of 26 years and above: 2.0% per year

- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
 - c. Current Tier 2 employees as of the date of this agreement will receive an annual cost of living adjustment of the lower of CPI (as defined above) or 1.5% per year for service at retirement of 1-10 years. After 10 years of service, employees will receive an annual cost of living adjustment in retirement pursuant to Section 13(a) above.
14. Disability Benefit (Tier 2)
- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to:
 - i. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, with a minimum of 40% and a maximum of 70% of Final Compensation.
 - b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
 - i. $2\% \times \text{Years of Service} \times \text{Final Compensation}$, with a minimum of 20% and a maximum of 70% of Final Compensation.
15. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.
16. Tier 2 members eligible for retirement will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving spouse or domestic partner in the event of the retiree's death after retirement.
- a. Tier 2 members eligible for retirement will be provided with survivor benefits in the event of death before retirement. These benefits will

be the same as Tier 1 members but reduced to reflect the new 70% pension cap versus the current 75% pension cap.

17. Tier 2 members not eligible for retirement at the time of death will be provided with survivor benefits of a return of employee contributions, plus interest in the event of death before retirement
18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
 - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
 - b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRA, regardless of tier, will be placed in Tier 1.
 - c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRA will be placed in Tier 2.
19. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

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

1. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
2. New lowest cost medical plan
 - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members
 - b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
 - c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
 - d. Any changes to the "Floor" shall be by mutual agreement only.
3. Potential Tier 1 opt-out
 - a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare

plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily “opt out” of the current retiree medical plan. Those members who “opt out,” and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.

4. Continue enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers. The enrollment period for Medicare Parts A and B shall begin three months before the retiree’s 65th birthday, continue through the month of birth, and conclude three months after the retiree’s 65th birthday.
5. The current defined benefit retiree healthcare plan is modified to enable retired members to select an “in lieu” premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the “special enrollment” provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an “in lieu” premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the “in-lieu” premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or

survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

6. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit unsubsidized coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
7. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.
8. Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare.
9. All Tier 2A employees (except those represented by OE#3) will mandatorily be removed from the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
10. Tier 2A employees represented by OE#3, so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined

benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees represented by OE#3 who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees represented by OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.

11. All Tier 2B employees will be mandated to contribute 2% of base pay to the VEBA.
12. All Tier 2C employees will be automatically removed from the dental benefit plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
13. Members who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 14% of payroll, the City may decide to contribute a maximum of 14%.
14. The parties have been advised that the difference between the defined benefit contribution rate (7.5%) and the VEBA opt-out contribution rate (4.5%) will be taxable income.

15. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
16. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.
17. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member is eligible for Medicare (usually age 65).

- a. Qualifications - The member must not be eligible for an unreduced service retirement.
- b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
- c. Upon reaching Medicare eligibility, the benefit will cease
- d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
- e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

Disability Definition and Process

1. Reinstate the previous City definition for disability for all Federated employees.
2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code §3.28.1240
3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings.
6. Independent panel of experts appointed by 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications
 - a. *Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel.*
 - b. Each member shall have a four-year term and meet the following minimum qualifications:
 - i. 10 years of practice after completion of residency
 - ii. Practicing or retired Board Certified physician
 - iii. Not a prior or current City employee
 - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
 - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
 - vi. Varying medical experience
 - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
 - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

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

7. Administrative law judge

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

8. Workers' Compensation Offset

- a. The workers' compensation offset currently in place for Federated Plan participants will continue for Tier 1 and Tier 2.

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR

- a. The funds credited to the SRBR will continue to be credited to the Federated City Employees' Retirement System to pay for pension benefits

2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to

maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.
- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 68.
- e. In the event of litigation by a retired member or members of the Federated bargaining units challenging this provision of the Settlement Agreement against a Federated bargaining unit, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend the Federated bargaining unit with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the

attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

Attorney's Fees

1. \$1.257 million to the litigants (AFSCME-MEF and CEO; IFPTE Local 21-AEA, AMSP and CAMP; and OE#3) within 30 days of the settlement framework being approved by Council in open session.
 - a. AFSCME (MEF and CEO) shall not be entitled to any more in Attorneys' Fees and expenses related to the litigation and resolution of Measure B, and are not entitled to final and binding arbitration regarding Attorney's Fees.
 - b. The City and IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B.
 - i. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
 - ii. The City shall pay the arbitrator's fees and costs, including court reporter
 - iii. The parties agree that the issue presented shall be: Whether IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 are entitled, under binding statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation and resolution of Measure B? If so, in what amounts?

Quo Warranto/Ballot Measure Implementation Plan

1. The Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3) agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, all the Federated bargaining units shall endorse the ballot measure.
2. As agreed upon by the City and the Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3), the proposed quo warranto implementation plan shall be followed by the parties in the manner described below.

Step	Time	Action
1.	Immediately upon signature of the Framework by the litigants	Parties ask for a stay in appellate proceedings (Lucas ruling). AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP), and OE#3 will also ask for a stay in the PERB proceedings until March 31, 2016. So long as the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
2.	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> • Global settlement involving all litigants (including retirees) and bargaining unit representatives • Entered into for purposes of settlement

		<ul style="list-style-type: none"> • Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith • Non-precedential for any purpose
3.	Immediately after #2	Begin drafting ordinances. Begin identifying ordinances implemented as a result of Measure B.
5.	Immediately after #2	Parties negotiate charter language, pursuant to Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan," simultaneous with agreement on stipulated facts, order and judgment.
6.	Simultaneous with #5	<p>Although the Federated Bargaining Units are not parties to the pending litigation in Santa Clara Superior Court Case No. 1-13-CV-245503 ("Quo Warranto Case"), the Federated Bargaining Units will support the City and SJPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only)</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> • history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation; • changes to the proposed ballot language, including post-impasse changes; • tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations--as described on pages 3-4 of Attorney General opinion No. 12-605. • language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue); • the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable; • the desirability of finding a solution that is collaborative • financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable; • Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

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		<ul style="list-style-type: none"> Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate. Agreement that Resolution No. 76158 shall be null and void. Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans. <p>Stipulated Judgment shall reflect that Measure B shall be invalidated</p>
7.	Upon completion of #5 and #6	<ul style="list-style-type: none"> Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
8.	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> Formally adopt ordinances to implement Settlement Framework and replace Measure B. At such time as the judgment becomes final and the Quo Warranto issues, or the voters pass a substitute measure supported by the Parties, all parties dismiss/withdraw all complaints, unfair practice charges, etc.
9.	January 2016	<ul style="list-style-type: none"> Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan) to be completed by July 2016
10.	Third Party Litigation	All Federated bargaining units (except ALP) agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
11.	Immediately upon: (1) retirees not settling their litigation; or (2) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework agreed to by the Federated bargaining units for placement on the ballot in November 2016. The Parties will begin this process immediately in January 2016 if either the retirees have not settled or the quo warranto process has not been completed.

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by the Federated bargaining units.

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

Page 19 of 20

The Federated Bargaining Units and the City shall in good faith work toward implementing this agreement, and neither party shall take any action to undermine or subvert the terms and benefits provided by this agreement.

[Signature] 11/23/15

[Signature]

QEM 11/23/15

[Signature] 11/23/15

MB 11/23/15
dhp 11/23/15

JWT 11/23/15

yae 11/23/15

[Signature] 11-23-15

Marcel Mercede
for JS 11/23/15

YMM 11/23/15

LC 11/23/15

[Signature] 12/4/15

JfC. 12-3-15

VMT 12-3-15

SV 12/4/15



December 3, 2015

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

Re: San Jose Federated Tier 2 Pension Benefit

Dear Ms. Schembri:

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

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

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

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

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

Analysis

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

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



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

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

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

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



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

Assumptions

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

* * *

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Bartel'.

John E. Bartel
President

c: Cathy Wandro, Bartel Associates

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December 3, 2015

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

Re: San Jose Federated Retiree Healthcare Agreement

Dear Ms. Schembri:

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

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



Analysis – Funding Valuation Basis

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

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

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

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

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

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

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

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



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

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

Assumptions

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

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

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

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

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

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

* * *

Jennifer Schembri
December 3, 2015
Page 4



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

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

Sincerely,

John E. Bartel
President

c: Cathy Wandro, Bartel Associates

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

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



December 3, 2015

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

Re: San Jose Federated Guaranteed Purchasing Power (GPP)

Dear Ms. Schembri:

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

Analysis

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

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

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

Assumptions

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

* * *

Jennifer Schembri
December 3, 2015
Page 2



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

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

Sincerely,

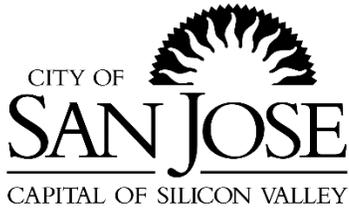
A handwritten signature in blue ink, appearing to read 'John E. Bartel'.

John E. Bartel
President

c: Cathy Wandro, Bartel Associate

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EXHIBIT 8



CITY COUNCIL AGENDA

DECEMBER 15, 2015

SYNOPSIS

CHAPPIE JONES
ASH KALRA
RAUL PERALEZ
MANH NGUYEN
MAGDALENA CARRASCO

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

SAM LICCARDO MAYOR

PIERLUIGI OLIVERIO
TAM NGUYEN
ROSE HERRERA VICE MAYOR
DONALD ROCHA
JOHNNY KHAMIS

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

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 14th 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 for the final document.

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

- **Call to Order and Roll Call**
9:03 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: All Present.

11:39 a.m.- Regular Morning Session, Council Chambers, City Hall
Absent Council Members: All Present.

1:36 p.m. - Regular Afternoon Session, Council Chambers, City Hall
Absent Council Members: All Present.
- **Invocation (Mayor)**
Pastor David Cannistraci, Gateway City Church offered a prayer for the Invocation.
- **Pledge of Allegiance**
Mayor Sam Liccardo led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved with General Plan Items 10.2 and 10.3 heard before the Consent Calendar; Item 2.23 deferred to January 12, 2016; Items 3.5 and 3.10 deferred to January 2016; Item 3.11 heard no earlier than 2:30 and Item 4.4 heard no earlier than 4:00 p.m.

- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

There were none presented.

2. CONSENT CALENDAR

- 2.1 Approval of Minutes.**
There were none.

- 2.2 Final Adoption of Ordinances.**

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 29664 – An ordinance of the City of San José amending chapter 6.88 of Title 6 of the San José Municipal Code as follows: to add Section 6.88.295 to add the definition of transport; to add Section 6.88.425 to require identification badges to be worn; to add Section 6.88.445 to expressly prohibit deliveries of medical marijuana; to add Section 6.88.465 to allow a registered collective to transfer medical marijuana to other collectives who are registered with the City; to amend Sections 6.88.212, 6.88.235, 6.88.242, 6.88.310, 6.88.330, 6.88.380, 6.88.420, 6.88.430, 6.88.435, 6.88.440, 6.88.460 and 6.88.900 to allow registered collectives to manufacture medical marijuana products at their off-site cultivation location, clarify disqualification from the registration process, revise the requirements for cultivation, decrease the time required for storing video from surveillance cameras from 90 to 30 days, impose new restrictions on cultivation for personal use, and to make other technical, nonsubstantive, or typographical changes. CEQA: Addendum to a Negative Declaration, File No. PP11-076.

Ordinance No. 29664 adopted.

- (b) ORD. NO. 29662 – An ordinance of the City of San José amending Chapter 6.44 of the San José Municipal Code to add a purpose section, add additional and clarifying definitions, require all massage therapists to be certified by the California Massage Therapy Council, require massage businesses to provide the Police Chief with copies of massage therapist certificates, require mandatory reporting to the Police Chief, specify operational requirements and to make other technical and required revisions to be consistent with State law. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment.

Ordinance No. 29662 adopted.

2. CONSENT CALENDAR

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

- (c) ORD. NO. 29668 – An ordinance of the City of San José rezoning the real property located on the west side of South De Anza Boulevard, approximately 120 feet west of the intersection of South De Anza Boulevard and Rainbow Drive from the A(PD) Planned Development Zoning District to the Commercial Pedestrian (CP) Zoning District on a 0.13 gross acre site (Vigagold Inc., Owner).
Ordinance No. 29668 adopted.
- (d) ORD. NO. 29669 – An ordinance of the City of San José rezoning four properties located on the northwest corner of West San Carlos and Delmas Avenue (267 and 279 Delmas Avenue and 405 West San Carlos Street) from LI Light Industrial to the DC Downtown Primary Commercial Zoning District on an approximately 0.47 gross acre site (San Carlos Parts LLC, Owner). CEQA: Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), and addenda thereto, including Addendum File No. C15-042.
Ordinance No. 29669 adopted.
- (e) ORD. NO. 29670 – An ordinance of the City of San José rezoning the real property located at 1785 Oakland Road from the A(PD) Planned Development Zoning District to the IP(PD) Planned Development Zoning District to allow uses of the IP Industrial Park Zoning District and miniwarehouse/ministorage uses on an approximately 1.25 gross acre site (Union Carbide Industrial Gases Inc., Owner).
Ordinance No. 29670 adopted.
- (f) ORD. NO. 29667 – An ordinance of the City of San José rezoning the real property located at the southwest corner of Senter Road and East Capitol Expressway at 3167 Senter Road from the CP Commercial Pedestrian Zoning District to the PQP Public/Quasi-Public Zoning District for consideration of education land uses on a 1.58 gross acre site (Arnold Perez, Owner).
Ordinance No. 29667 adopted.
- (g) ORD. NO. 29665 – An ordinance of the City of San José to rezone from IP Industrial Park to LI Light Industrial Zoning District on a 4.48 gross acre site, located on the north of Silver Creek Valley Road, approximately 210 feet north of Hellyer Avenue at 5880 Hellyer Avenue (AgKey, LLC, Owner). CEQA: Edenvale East General Plan Amendment and Rezoning Project Negative Declaration.
Ordinance No. 29665 adopted.
- (h) ORD. NO. 29666 – An ordinance of the City of San José rezoning the real property located at the northwest corner of North 10th Street and East Taylor Street from A(PD) Planned Development Zoning District to CIC(PD) Planned Development Zoning District to allow up to 403 residential units and up to 5,000 square foot of retail space, the uses of the CIC Combined Industrial Commercial Zoning District (with mini storage per applicant). (Libitzky Holdings, LP, Owner). Cannery Park/Hanover Project Mitigated Negative Declaration.
Ordinance No. 29666 adopted.

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Minutes.

(a) Rules and Open Government Committee Minutes of November 18, 2015. (Mayor)
CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Approved.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Actions Related to the Lease Agreement with Transportation Security Administration at the Airport.

Recommendation: Adopt a resolution:

- (a) Authorizing the City Manager to negotiate and execute an On-Airport Lease (“Lease”) with the U.S. General Services Administration (“GSA”) for exclusive space leased by the Transportation Security Administration at the Airport from January 1, 2016 through December 31, 2019, with the option for GSA to extend the term for an additional three years through December 31, 2022 on the same terms and conditions, and with revenue to the City of approximately \$ 1,210,000 annually; and
- (b) Authorizing the City Manager to negotiate and execute amendments to the Lease necessary to implement annual lease rate adjustments and changes in leased space at any time during the term of the Lease.

CEQA: Not a Project, File No. PP10-066(f), Lease of equipment or existing space for the same use. (Airport)

Resolution No. 77619 adopted.

2.8 Boards and Commissions Appointments.

Recommendation: Approve the following Board and Commission appointments:

- (a) Airport Commission:
 - (1) District 1 Seat: Appoint Richard Terrill to a term expiring 6/30/17;
- (b) Historic Landmarks Commission:
 - (1) Member Seat: Appoint Eric Hirst to a term expiring 6/30/18;
- (c) Human Services Commission:
 - (1) District 5 Seat: Appoint Peter Ortiz to a term expiring 12/31/16;

2. CONSENT CALENDAR

2.8 Boards and Commissions Appointments. (Cont'd.)

- (d) Library and Early Education Commission:
 - (1) District 8 Seat: Appoint Matthew Giordono to a term expiring 6/30/17;
 - (e) Neighborhoods Commission:
 - (1) District 4 Seat: Appoint Mark Espinoza to a term expiring 6/30/16;
 - (f) Senior Citizens Commission:
 - (1) Citywide Seat: Appoint May Miller to a term expiring 6/30/17.
- CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)
Approved.

2.9 City Manager's Travel to Phoenix, Arizona.

Recommendation: Authorize travel for City Manager, Norberto Dueñas to travel to Phoenix, Arizona on January 14 – 16, 2016 to participate in the Large Cities Executive Forum. City Manager's Non Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (City Manager)
Approved.

2.10 Fall Public Safety Fair/Forum.

Recommendation: As recommended by the Rules and Open Government Committee on December 2, 2015:

- (a) Retroactively approve Vice Mayor Rose Herrera's Fall Public Safety Fair/Forum held on Monday, November 23, 2015 as a City Council sponsored Event and approve the expenditure of funds.
- (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 12/2/15 – Item G(1)(a)]
Approved.

2.11 City Council Committee and Board and Commission Appointments.

Recommendation: As recommended by the Rules and Open Government Committee on December 2, 2015, appoint Council Member Manh Nguyen to represent the City of San José on the Santa Clara Valley Transportation Authority (VTA). CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (Mayor)
[Rules Committee referral 12/2/15 – Item F(1)(a)]
Approved.

2. CONSENT CALENDAR

2.12 Agreement with Moore, Iacofano Goltsman, Inc. for Various Capital Improvement Projects.

Recommendation: Approve the First Amendment to the Agreement for Consultant Services with Moore, Iacofano Goltsman, Inc. to increase the total contract amount from \$250,000 to \$750,000, which will allow continued comprehensive planning support for various Parks, Recreation and Neighborhood Services Department Capital Improvement Projects including, but not limited to, community centers, parks, trails, and other recreational facilities. CEQA: Not a Project, File No. PP10-066(d), Consultant Services that involve no physical changes to the environment. (Parks, Recreation and Neighborhood Services)

Approved.

2.13 2014-2015 Park Trust Fund Annual Report.

Recommendation: Accept the Park Trust Fund annual report for fiscal year 2014-2015. CEQA: Not a project, File No. PP10-069(a), Annual Reports and Assessments that involve no approvals of any city actions. (Parks, Recreation and Neighborhood Services)

Accepted.

2.14 Actions Related to the 2016-2017 Hazardous Vegetation Commencement Report from the Office of Santa Clara Environmental Resource Agency.

Recommendation: Adopt a resolution:

- (a) Accepting the 2016-2017 Hazardous Vegetation Commencement Report compiled by the Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation;
- (b) Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the Report are a public nuisance; and
- (c) Directing the Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation to mail notices of a Public Hearing on January 26, 2016 at 1:30 p.m. before the City Council on the Report to property owners of affected real properties pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, Guidelines Section 15301. Existing Facilities, File No. PP13-097. (Planning, Building and Code Enforcement)

Resolution No. 77620 adopted.

2. CONSENT CALENDAR

2.15 Amendment to Title 15 Public Utilities for Water Efficient Landscape Standards.

Recommendation: Approve an ordinance amending Chapter 15.11 (Water Efficient Landscape Standards for New and Rehabilitated Landscaping) of Title 15 (Public Utilities) of the San José Municipal Code to add and amend definitions, modify landscape installation requirements, and expand the types of projects subject to landscape installation requirements, consistent with State regulations governing local landscape water efficiency ordinances. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041, and Addenda thereto. (Planning, Building and Code Enforcement)

Ordinance No. 29671 passed for publication.

2.16 Actions Related to the Bay Area Urban Areas Security Initiative Grant.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to execute an Agreement between the City of San José and the City and County of San Francisco, acting as fiscal agent for the Bay Area Urban Areas Security Initiative (UASI), to accept the 2015 UASI grant allocation in the amount of \$1,000,000, and to negotiate and execute additional amendments and related documents without further City Council action.

Resolution No. 77621 adopted.

(b) Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:

- (1) Establish a City-Wide Expenses appropriation to the Police Department for the Urban Areas Security Initiative Grant - Police 2015 in the amount of \$580,000.
- (2) Establish a City-Wide Expenses appropriation to the Fire Department for the Urban Areas Security Initiative Grant - Fire 2015 in the amount of \$155,000.
- (3) Increase the estimate for Revenue from the Federal Government by \$735,000.

CEQA: Not a Project, File No. PP10-066 Agreements and Contracts with no changes in the physical environment and File No. PP10-0067(b) appropriation ordinance that involve no approvals of city actions that involve impacts to the physical environment.

(Police/Fire/City Manager)

Ordinance No. 29672 adopted.

Resolution No. 77622 adopted.

2. CONSENT CALENDAR

2.17 Amendment to the Agreement with North San Pedro Townhomes, LLC and San Pedro Life I, LLC for Construction of a Sanitary Sewer Main.

Recommendation:

- (a) Approve an Amendment to the existing City-Private Developer Agreement with North San Pedro Townhomes, LLC and San Pedro Life I, LLC to allow the City to reimburse the Developer in an amount not to exceed \$1,427,692 for the realignment of the existing sanitary sewer located on Terraine Street between W. St. James Street and Devine Street.

Approved.

- (b) Adopt a resolution authorizing the City Manager, on behalf of the City, to execute documents as necessary to finalize an exchange of properties between the City and Charles W. Davidson, Anita A. Davidson and Gloria Chiang, Trustees of the Davidson Living Trust dated December 6, 1989, pursuant to a Temporary Construction Easement and Exchange Agreement to be executed between the Successor Agency and the Davidson Trust in connection with the Julian Street Realignment Project.

CEQA: File No. PP13-076, Remove and replace in-kind underground utility pipes. Council District 3. (Public Works)

Resolution No. 77623 adopted.

2.18 Vacation of a Public Easement Located on 1914 McBain Avenue.

Recommendation:

- (a) Adopt a resolution:
 - (1) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of the public easement;
 - (2) Vacating a portion of the public easement on 1914 McBain Avenue that has been superseded by relocation upon the satisfaction of the conditions set forth in the resolution; and
 - (3) Directing the City Clerk, upon the satisfaction of the conditions set forth in the resolution, to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

Resolution No. 77624 adopted.

- (b) Adopt a resolution authorizing the City Manager to negotiate and execute a quitclaim deed for the portion of public easement to be summarily vacated, which will be provided to the property owners of 1914 McBain Avenue, Eric L. and Christen M. Fisher, upon the satisfaction of conditions set forth in the resolution of vacation.

CEQA: Exempt, Guidelines Section 15305. Minor Alterations to Land, Department of Public Works File No. 3-18966. Council District 1. (Public Works)

Resolution No. 77625 adopted.

2. CONSENT CALENDAR

2.19 Actions Related to the Construction Contract for the 6736 – Large Trash Capture Device Installation – Phase III Project.

Recommendation:

- (a) Approve award of a construction contract for the 6736 – Large Trash Capture Device Installation - Phase III Project to the low bidder, JMB Construction, Inc. in the amount of \$5,421,787 and a ten percent contingency in the amount of \$542,179.

Approved.

- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the Storm Sewer Capital Fund:

- (1) Decrease the Unrestricted Ending Fund Balance in the amount of \$2,000,000.
- (2) Increase the appropriation to the Public Works Department for Large Trash Capture Devices in the amount of \$2,000,000.

CEQA: Public Project for the Citywide Large Trash Capture Device Installation, File No. PP15-081 dated September 1, 2015 is an Addendum to a Mitigated Negative Declaration for a previous project File No. PP08-257 adopted on 1/22/2009. Council Districts 2 and 7. (Public Works/City Manager)

Ordinance No. 29673 adopted.

2.20 Actions Related to the Design-Build for the 60-Inch Brick Interceptor Phase VI-A Project.

Recommendation:

- (a) Adopt a resolution adopting the Mitigated Negative Declaration prepared for the Project and a related mitigation monitoring and reporting program, in accordance with the California Environmental Quality Act.

Resolution No. 77626 adopted.

- (b) Adopt a resolution by the City Council doing the following in accordance with San José Municipal Code Section 14.07.310:

- (1) Finding that the cost of the proposed design-build contract for the 60-inch Brick Interceptor Phase VI-A Project (“Project”) will exceed \$5,000,000, and the use of the design-build delivery method process is likely to save money and/or result in faster Project completion than if the City used the traditional design-bid-build method of project delivery.
- (2) Approving the issuance of a Request for Proposals and the evaluation criteria and process by which the City shall select a design-build entity for the Project.
- (3) Authorizing the Director of Public Works to issue addenda to the Request for Proposals to add any additional requirements or to make such other revisions to the Request for Proposals that are consistent with the scope and selection criteria as approved by Council.

Resolution No. 77627 adopted.

2. CONSENT CALENDAR

2.20 Actions Related to the Design-Build for the 60-Inch Brick Interceptor Phase VI-A Project. (Cont'd.)

- (c) Approve the Third Amendment to the Consultant Agreement with AECOM Technical Services by extending the term of the Agreement from December 31, 2015 to December 31, 2018, to enable AECOM to continue providing technical services to support delivery of the Project with no additional compensation.

CEQA: Sewer Interceptor Phase VI-A Initial Study and Mitigated Negative Declaration, File No. PP10-160. Council Districts 3 and 4. (Public Works)

Approved.

2.21 Amendment to the Agreement with Siemens Industry, Inc. for System Software.

Recommendation: Approve a Second Amendment to the Agreement with Siemens Industry, Inc. for TiMC system software design and implementation, to extend the term of the agreement from January 1, 2016 to June 30, 2018, amend the fee schedule to reflect current labor rates, and increase the total compensation from \$1,042,917 to \$1,092,734.

CEQA: Not a Project, File No. PP10-066(a), Agreements and contracts for services that involve no physical changes to the environment. (Transportation)

Approved.

2.22 Downtown San José Property-Based Business Improvement District Annual Financial Report.

Recommendation: Approve the Downtown San José Property-Based Business Improvement District Annual Financial Report for FY 2014-15. CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involves no approval of City actions. Council District 3. (Transportation)

Approved.

2.23 Amendment to the Lease of Airport Premises with Sky Chefs Inc.

Recommendation:

- (a) Approve a Second Amendment to the Lease of Airport Premises between the City of San José and Sky Chefs, Inc. (“Sky Chefs”) to:
- (1) Extend the term of the Lease for one year with two renewal options of one year each.
 - (2) Increase the Minimum Annual Guarantee (MAG) floor to be paid by Sky Chefs from \$500,000 to \$550,000 annually with an annual MAG adjustment made based on gross sales. In no event will the MAG be reduced below \$550,000 per year.

2. CONSENT CALENDAR

2.23 Amendment to the Lease of Airport Premises with Sky Chefs Inc. (Cont'd.)

- (b) Adopt a resolution authorizing the City Manager to negotiate and execute up to two one-year amendments to extend the term of the Lease through February 14, 2019 on the same terms and conditions.

CEQA: Not a Project, File No. PP10-066(f), Lease of equipment or existing space for the same use and will involve no physical changes to the environment. (Airport)
(Deferred from 12/8/15 – Item 2.7)

Deferred to January 12, 2016 per Orders of the Day.

2.24 Master Planned Development Permit for Property Located on the Northwest Corner of North 10th Street and East Taylor Street.

Recommendation: Consideration of adoption of a resolution approving a Master Planned Development Permit to allow construction of up to 403 residential units and up to 5,000 square feet of retail space, the uses of the CIC Combined Industrial Commercial Zoning District, the demolition of three existing industrial buildings, and the removal of seven ordinance sized trees on an 11.43 gross acre site located on the northwest corner of North 10th Street and East Taylor Street. CEQA: Cannery Park/Hanover Project Mitigated Negative Declaration, File No. GP15-001. Council District 3. (Planning, Building and Code Enforcement)

[Referred from 12/8/15 – Item 11.11(b)]

Resolution No. 77628 adopted.

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Norberto Dueñas (Verbal Report). No Report.

3.2 Labor Negotiations Update.

Recommendation: Accept Labor Negotiations Update.

Heard at 9:03 a.m.

No Report.

3.3 Annual Report on City Services 2014-15.

Recommendation: Accept the Annual Report on City Services FY 2014-15. CEQA: Not a Project, File No. PP10-069(a), Annual reports that involve no approvals of City actions. (Auditor)

Deferred to January 12, 2016 per Rules and Open Government Committee.

3. STRATEGIC SUPPORT SERVICES

3.4 Appeals Hearing Board Interviews.

Recommendation: Interview applicants and consider appointments to fill Two (2) Members-at-Large with terms ending December 31, 2019 on the Appeals Hearing Board. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)
Deferred to January 12, 2016 per Rules and Open Government Committee.

3.5 Civil Service Commission Interviews.

Recommendation: Interview applicants and consider appointments to fill two (2) Members-at-Large with terms ending November 30, 2019 on the Civil Service Commission. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)
Deferred to January 2016 per Orders of the Day.

3.6 Council Priority Setting Session.

Heard First at 1:30 p.m.

Recommendation:

(a) Approve new items for the Council Priority list.

(b) Rank items on Council Priority list.

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities that involve no approvals of any city action. (City Manager)

	<u>POLICY NAME</u>	<u>TOTAL VOTES*</u>
(1)	Housing Rehabilitation Program/Homeless Veterans Voucher	20
(2)	Downtown Active Storefronts Initiative	12
(3)	San José Urban Agriculture Incentive	10
(4)	Gender Pay Equity	7
(5)	Disadvantaged Business Enterprises	5
(6)	Electronic Billboards	4
(7)	Graywater Systems	2
(8)	Surplus Land Sale	2
(9)	Downtown and/or Citywide Parks Operations/Maintenance Financing Dist.	1
(10)	North San José Policy Review	1
(11)	Peddler Permits Enforcement/Outdoor Mobile Vendor Policy	1
(12)	San José is Open for Business/Legal Nonconforming Uses	1
(13)	Development Agreement Policy	0
(14)	Food and Clothing Distribution at City Parks	0
(15)	Off-Sale of Alcohol at Grocery Stores Streamlining	0
(16)	Real Estate Transactions Streamlining (Phase 3)	0
(17)	Zoning Ordinance Quarterly Modifications	0

* *Individual votes by the Mayor and Council Members are available on the City Clerk Website link: http://sanjose.granicus.com/GeneratedAgendaViewer.php?event_id=032c1a8c-300a-4a75-9181-819a83083bd8*

3. STRATEGIC SUPPORT SERVICES

3.7 Actions Related to the Terms of the Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising Out of Measure B with Bargaining Units Representing Employees in the Federated City Employees' Retirement System and Modifications for Employees in Unit 99 and Units 81/82.

Recommendation:

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

Resolution No. 77629 adopted.

Noes: Oliverio.

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

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

Ordinance No. 29674 adopted.

Noes: Oliverio.

3. STRATEGIC SUPPORT SERVICES

3.8 TEFRA Hearing for the Issuance of Tax-Exempt Revenue Bonds by the California Municipal Finance Authority for the Harker School Project.

Recommendation:

- (a) Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing for the issuance of \$20,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority (“CMFA”).
- (b) Consider adoption of a resolution approving the issuance of tax-exempt revenue bonds, by the CMFA in an aggregate principal amount not to exceed \$20,000,000 to finance: (1) the acquisition, construction and/or equipping of certain educational facilities to be owned and operated by the Borrower and to be located in the City at 500 Saratoga Avenue, San José, California and (2) certain expenses incurred in connection with the issuance of the Bonds (collectively, the “Project”).

CEQA: Exempt, Guidelines Section 15061(b)(3), No potential for causing a significant effect on the environment. Council District 1. (Finance)

The TEFRA Hearing was held at 1:30 p.m.

Resolution No. 77630 adopted.

3.9 Mayor’s 2015 Biennial Ethics Review and Recommendations.

Recommendation: As recommended by the Rules and Open Government Committee on December 2, 2015:

- (a) Direct the City Clerk to report on the feasibility of creating an electronic filing system for lobbyist tracking and reporting, which would automate the process in a way that provides immediate online disclosure upon submittal of reports.
- (b) Direct the City Clerk to refine current lobbyist forms and add a section that differentiates the type of contact with elected officials and their Chiefs of Staff (i.e.: email, phone call, meeting, etc.).
- (c) Direct the City Attorney to draft amendments to Title 12 referencing lobbyist reporting disclosures to:
 - (1) Change reporting disclosures from quarterly to weekly, on every Monday after contact with elected officials/Chiefs of Staff, along with the annual registration report.
 - (2) Differentiate type of contact with elected officials/Chiefs of Staff in the report (i.e. email, phone call, meeting, etc.).
 - (3) Amend section 12.12.800 to clarify requirements for disclosure of all scheduled meetings and scheduled telephone conversations with registered lobbyists.
- (d) Direct the Ethics Commission to recommend revisions to the Gift Ordinance to better align with the State gift rules and simplify the compliance with conflicting rules.

CEQA: Not a Project, File No. PP10-069 City Administrative activities that involve no approvals of any city action. (Mayor)

The memorandum from Mayor Sam Liccardo, dated November 19, 2015, was approved, the direction was approved as described previously above in Item 3.9(a)-(d). Staff was directed to return to Council in February 2016 with an update.

Noes: M. Nguyen.

3. STRATEGIC SUPPORT SERVICES

3.10 Actions Related to Salary Setting Commission Recommendations.

Recommendation: As recommended by the Salary Setting Commission, approve an ordinance establishing the following salaries and benefits for the Mayor and City Council for the next two Fiscal Years, the period July 1, 2015 through June 30, 2017:

- (a) For the Mayor, increase the authorized salary from \$114,000 annually to \$125,000 annually.
- (b) For each Council Member, increase the authorized salary from \$81,000 annually to \$92,000 annually.
- (c) Retain the levels of health, dental, life insurance and other benefits in accordance with the benefits provided to management employees in Unit 99.
- (d) Retain the current retirement benefits offered under the CalPERS Tier 2 Plan and the PTC 457 Defined Contribution Plan.
- (e) Increase the vehicle allowance from \$350 per month to \$500 per month for the Mayor and each member of the City Council.
- (f) Continue to require Council Members to pay \$250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities that involve no approvals of any City actions. (City Clerk)

(Deferred from 5/19/15 – Item 3.3 and 6/23/15 – Item 3.21)

Deferred to January 2016 per Orders of the Day.

3.11 Approval of the Michael Johnson Memorial Highway Project.

Recommendation: Approve the Michael Johnson Memorial Highway signage project, to be located along Highway 87 in downtown San José. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Police)

Approved.

3.12 Comprehensive Annual Financial Report.

Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.

Recommendation: As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015, accept the Comprehensive Annual Financial Report for the City of San José for Fiscal Year 2014-2015. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)

[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(5)]

Accepted.

3. STRATEGIC SUPPORT SERVICES

3.13 External Auditor's Reports for Fiscal Year 2015-2015.

Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.

Recommendation: As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015:

- (a) Accept the Single Audit Report for the Basic Financial Statements with Federal and Airport Compliance Sections for the Year Ended June 30, 2015.
- (b) Accept the External Auditor's Report to Management addressed to the Public Safety, Finance, and Strategic Support Committee for the Year Ended June 30, 2015.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)
[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(6)]
Accepted.

3.14 Comprehensive Annual Debt Report.

Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.

Recommendation: As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015, accept the Comprehensive Annual Debt Report for the City of San José for Fiscal Year 2014-2015. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)

[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(5)]
Accepted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 North San José Area Development Policy Amendment Related to Traffic Impact Fee Incentive Program and Low Intensity Uses.

Recommendation: Adopt a resolution to approve a North San José Area Development Policy amendment to:

- (a) Extend the deadline to qualify for reduced North San José Traffic Impact Fee under the Near-Term Industrial Development Incentive Program by two years to December 31, 2017.
- (b) Revise the criteria to qualify as a low intensity industrial use with traffic impact fee collectible based on trip generation of the use rather than building square footage.

CEQA: North San José Development Policies Update Final Program EIR and Addenda thereto (Resolution No. 72768) (Economic Development/Planning, Building and Code Enforcement/Transportation)

Resolution No. 77631 adopted. Staff was directed to return to Council in February 2016 with a comprehensive update and/or study session.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Substantial Amendment to the FY 2015-16 Annual Action Plan.

Recommendation:

- (a) Hold a Public Hearing and take public comment on a Substantial Amendment to the City's Program Year (FY) 2015-16 Annual Action Plan to:
 - (1) Reduce the Unallocated Fund balance of Community Development Block Grant (CDBG) funds from \$2,000,000 to \$1,267,683 in the adopted 2015-16 Annual Action Plan to reallocate to previously approved Community Facility Rehabilitation Projects.
 - (2) Increase funding for the following CDBG funded Community Facility Projects from project carryover funds from the FY 2014-15 Adopted Annual Action Plan:
 - (a) Educare Play Structure Installation - Invest an additional \$250,000 in CDBG funds to complete the installation of the play structure;
 - (b) Rehabilitation of the former Head Start building - Invest an additional \$260,000 in CDBG funds to complete rehabilitation of the building which will provide a community hub in the Santee neighborhood.
 - (c) Recovery Café Rehabilitation project - Invest an additional \$434,189 in CDBG funds to complete rehabilitation of the social hall, commercial kitchen, classrooms, bathrooms, and ADA ramps.
 - (3) Add \$238,913 of Emergency Solutions Grant (ESG) funds from previous year balances to support services for homeless individuals and families.
 - (4) Make an administrative adjustment to move \$211,872 of CDBG funding for the San José Streets Team (SJST) from the Encampment and Place-based Clean-Up Project to the Services for Homeless and Unhoused Populations project.

The Public Hearing Was Held.

- (b) Adopt a resolution approving the Substantial Amendment to the FY 2015-16 Annual Action Plan.

CEQA: Exempt, Guidelines Section 15061(b)(3) No potential for causing a significant effect on the environment. (Housing)

Heard Not Before 1:30 p.m.

Resolution No. 77632 adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Actions Related to the Acquisition of the Plaza Hotel for Housing the Homeless.

Recommendation: Adopt a resolution:

- (a) Authorizing the Director of Housing, on behalf of the City, to negotiate and execute a purchase and sale agreement to acquire the Plaza Hotel, located at 96 South Almaden Boulevard, from the Successor Agency to the Redevelopment Agency of the City of San José for \$750,000 from the Community Development Block Grant Fund for the purposes of housing the homeless for a duration of five years; and
- (b) Authorizing the Director of Housing to negotiate and execute all other legal documents in order to effectuate the acquisition.

CEQA: Exempt, Guidelines Section 15301(a)(d). Existing Facilities, File No. PP15-078. Council District 3. (Housing)

Resolution No. 77633 adopted.

4.4 Potential Research Regarding Impact Fee on Commercial Development to Fund Affordable Housing.

Recommendation:

- (a) Accept the research report from staff on a potential Commercial Impact Fee Nexus Study and Feasibility Study to support the development of affordable housing.
- (b) Discuss and provide direction to staff regarding next steps for a potential Nexus Study and Feasibility Study.

CEQA: Not a Project, File No. PP10-069(a), Reports that involve no approvals of any city actions. (Housing/Economic Development/ Planning, Building and Code Enforcement)

The revised memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Jones and Carrasco, dated December 11, 2015, was approved, accepting the Commercial Impact Fee (CIF) research report, including the following:

- (1) **Postpone undertaking a Nexus and Feasibility Study for a CIF ~~until San José achieves a 1:1 Jobs/Employed Resident Ratio.~~**
- (2) **Direct Staff to explore with the Silicon Valley Community Foundation, SPUR and other regional partners, and study how a regional fee structure or revenue-sharing might best address the need for affordable housing within the context of the widening jobs-housing imbalance within the region. These efforts should focus on regional solutions to mitigate the various impacts of that imbalance, including rising housing costs, widening service level inequities, freeway congestion and greenhouse gas emissions.**

Noes: Carrasco, Kalra, Peralez, Rocha.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.5 Rezoning the Real Property Located on the East Side of South Montgomery Street Between The Alameda and West San Fernando Street.

Recommendation:

- (a) Consider the Addendum to the San José Downtown Strategy 2000 Final Environmental Impact Report (Resolution No. 72767) and Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096) in accordance with the California Environmental Quality Act.

Approved.

- (b) Consideration of an ordinance rezoning the real property from the LI Light Industrial Zoning District to the DC Downtown Primary Commercial Zoning District to allow commercial use on a 0.17 gross acre site, located on the east side of S. Montgomery, between The Alameda and W. San Fernando Street (50 S. Montgomery St.) (Ilya Neizvestny, Owner). Planning Commission recommends approval (6-0-1) (Bit-Badal absent).

CEQA: Addendum to the San José Downtown Strategy 2000 Final EIR (Resolution No. 72767) and the Diridon Station Area Plan Final EIR (Resolution No. 77096). File No. C15-014 – Council District 6. (Planning, Building, and Code Enforcement)

Ordinance No. 29675 passed for publication.

4.6 Explore a Pilot Sanctioned Encampment in San José.

Recommendation: Accept the staff report related to exploring a pilot sanctioned encampment in San José and provide direction to staff.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City actions. (Housing)

[Council Referral 12/01/15 – Item 4.6 and 12/08/15 – Item 4.4]

Dropped.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

6.1 Proposed Air Service Incentive Program.

Items 6.1, 6.2 and 6.3 were heard concurrently.

Recommendation: Adopt a resolution revising the airline support program to facilitate the development of new air service at the Norman Y. Mineta San José International Airport (SJC) by removing the airline matching requirement on new air service marketing funds expended by the City, increasing the new air service marketing funds to be expended by the City, authorizing the Director of Aviation to waive the requirement for an airline to repay waived fees and marketing expenditures in the event of early termination of service, authorizing the Director of Aviation to determine application of the support program for additional frequencies on international routes in extenuating circumstances, and repealing Resolution No. 77099. CEQA: Determination of Consistency with the San José International Airport Master Plan (resolution No. 67380) and the Norman Y. Mineta San José International Airport Master Plan Update Final Supplemental EIR (Resolution No. 71451), File No. PP09-192. (Airport)

The memorandum from Mayor Sam Liccardo and Council Members Jones, Peralez, Carrasco and Khamis, dated December 11, 2015, was approved, accepting the recommendations outlined in the reports dated November 25, 2015 related to Items 6.1, 6.2 and 6.3. Staff was directed to only allow the elements of the policy (Item 6.1) to continue until the Budget Process and in the Spring Council will reconsider/evaluate and may terminate those elements of the plan, and determine what if any, other conditions the Council may want to have in their incentive program in the context of San José budgetary needs of the Airport in June 2016.

Resolution No. 77634 adopted.

6.2 Proposed Air Service Incentive Program Approval for New Air Service.

Recommendation:

- (a) Conduct a Public Hearing pursuant to California Government Code Section 53083 regarding economic development subsidies to be provided to Southwest Airlines, Alaska Airlines, British Airways and Lufthansa German Airlines pursuant to the City's Air Service Support Program.

The Public Hearing Was Held.

- (b) Adopt a resolution authorizing the City Manager or his designee to provide the following economic development subsidies pursuant to the City's Air Service Support Program:
 - (1) Southwest Airlines:
 - (a) Waive landing fees for 18 months after the initial operation at an approximate value of \$150,669.
 - (2) Alaska Airlines:
 - (a) Waive landing fees for 12 months after the initial operation at an approximate value of \$47,036.
 - (b) City will provide marketing funds of up to \$25,000.

6. TRANSPORTATION & AVIATION SERVICES

6.2 Proposed Air Service Incentive Program Approval for New Air Service. (Cont'd.)

Recommendation:

- (b) (3) British Airways:
 - (a) Waive landing fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$660,833.
 - (b) Waive ticket counter fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$770,880.
 - (c) Waive gate fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$402,960.
 - (d) City will provide marketing funds of up to \$600,000.
- (4) Lufthansa German Airlines:
 - (a) Waive landing fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$465,758.
 - (b) Waive ticket counter fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$551,232.
 - (c) Waive gate fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$288,144.
 - (d) City will provide marketing funds of up to \$600,000.

Resolution No. 77635 adopted.

- (c) Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Airport Maintenance and Operation Fund:
 - (1) Increase the appropriation to the Airport Department for Non-Personal/Equipment by \$1,225,000; and
 - (2) Decrease the appropriation to the Airport Department for Operations Contingency by \$1,225,000.

CEQA: Determination of Consistency with the San José International Airport Master Plan (Resolution No. 67380) and the Norman Y. Mineta San José International Airport Master Plan Update Final Supplemental EIR (Resolution No. 71451) File No. PP09-192.
(Airport/City Manager)

Ordinance No. 29676 adopted.

6.3 Amendment to the Agreement with Civilian, Inc. for British Airways and Lufthansa Airlines Marketing.

Recommendation: Approve a Third Amendment to the Master Consultant Agreement for Airport marketing services with Civilian, Inc. (formerly AdEase), to increase the compensation by \$1,200,000, from \$8,220,000 to an amount not to exceed \$9,420,000, to provide funds for a marketing program with British Airways and a marketing program with Lufthansa Airlines. CEQA: Not a Project, File No. PP10-066, Agreements and contracts for services that involve no physical change to the environment. (Airport)

Approved.

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Agreement with Kennedy/Jenks Consultants, Inc. for Engineering Services for the 7448 – Filter Rehabilitation Project.

Recommendation: Approve a Master Consultant Agreement with Kennedy/Jenks Consultants, Inc. to provide engineering services for the “#7448 – Filter Rehabilitation Project” at the San José-Santa Clara Regional Wastewater Facility from the date of execution through June 30, 2023, in a total amount not to exceed \$4,950,000, subject to the appropriation of funds. CEQA: Statutory Exemption, CEQA Guidelines Section 15262, Feasibility and Planning Studies. (Environmental Services)

Approved.

Staff was directed to report back with a supplemental memorandum to Council, the Transportation and Environment Committee (including the WPCP Committee) why the advanced purification treatment facility is separate rather than integrated, and if it can be integrated as part of the City of San José’s existing treatment, can resources be utilized more effectively.

7.2 Actions Related to the Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch Program.

Recommendation:

(a) Adopt a resolution:

- (1) Authorizing the City Manager to negotiate and execute a new Master Service Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch program through March 31, 2019.
- (2) Authorizing the City Manager to negotiate and execute an associated Contract Work Authorization with Pacific Gas and Electric Company for the Silicon Valley Energy Watch program in an amount up to \$3,681,067 through December 31, 2018.

Resolution No. 77636 adopted.

(b) Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Establish a new City-Wide appropriation to the Environmental Services Department for Silicon Valley Energy Watch 2016 in the amount of \$484,748.
- (2) Increase the Estimate for Other Revenue by \$484,748.

Ordinance No. 29677 adopted.

Resolution No. 77637 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.2 Actions Related to the Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch Program. (Cont'd.)

Recommendation:

- (c) Extend the limit date for 2.0 Environmental Service Specialist positions assigned to the Environmental Services Department through March 31, 2019.

CEQA: Not a Project, File No. PP10-066, Agreements and contracts for services that involve no physical change to the environment. Services that involve no physical changes to the environment. (Environmental Services/City Manager)

Approved.

7.3 Recycle Plus Curbside Material Audit.

Recommendation: As recommended by the Transportation and Environment Committee on December 7, 2015:

- (a) Accept third party studies of single-family residential recyclables characterization and hauler recycling facilities operations;
- (b) Direct staff to return to Council in February 2016 with proposed updated contract language, if applicable, in Districts A and C, to reflect changes discussed in this report for Council consideration; and
- (c) Direct staff to implement pilot studies to (1) process recyclables residue from Districts A and C to recycle organic waste, (2) issue larger garbage carts for single-family residences in focused areas; and return to Council with any recommended program changes as part of the 2016-2017 budget process.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Environmental Services)

[Transportation and Environment Committee referral from 12/7/15 – Item (d)(4)]

Deferred to January 12, 2016 Per Administration.

8. PUBLIC SAFETY SERVICES

9. REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Actions Related to the January – June 2016 Administrative Budget and Recognized Obligation Payment Schedule 15-16B.

Mayor Sam Liccardo convened the Successor Agency to the Redevelopment Agency of the City of San José at 5:50 p.m.

Recommendation: Adopt resolutions of the Successor Agency Board to:

(a) Approve the Administrative Budget for January 1 through June 30, 2016.

SARA Resolution No. 7044 adopted.

(b) Approve the Recognized Obligation Payment Schedule 15-16B and authorize payment of expenditures for items on ROPS 15-16B, which details the obligations of the Successor Agency for the period of January 1, 2016 through June 30, 2016.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Successor Agency)
SARA Resolution No. 7045 adopted.

Mayor Sam Liccardo adjourned the Successor Agency to the Redevelopment Agency of the City of San José at 5:51 p.m.

9.2 Fiscal Year 2014-2015 Audited Financial Statements.

Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.

Recommendation: Accept the Fiscal Year 2014-2015 Independent Auditor's Reports and Basic Financial Statements for the Successor Agency to the Redevelopment Agency of the City of San José. CEQA: Not a Project. File No. PP10-069(a), Organizational and Administrative Activities that involve no approvals of any city actions. (Successor Agency)
Accepted.

10. GENERAL PLAN PUBLIC HEARINGS

10.1 Tentative Approval of General Plan Consent Calendar Items.

No General Plan consent calendar items at this time.

10. GENERAL PLAN PUBLIC HEARINGS

Items 10.2 and 10.3 were heard first before the Consent Calendar.

10.2 General Plan Text Amendment: Greenhouse Gas Reduction Strategy.

Recommendation:

- (a) Adopt a resolution certifying the Supplemental Program Environmental Impact Report to the Envision San José 2040 General Plan Program Environmental Impact Report (Resolution No. 76041) providing additional analysis and information on greenhouse gas emissions, and making certain findings concerning significant environmental impacts, mitigation measures and alternatives, adopting a mitigation monitoring and reporting program, and adopting a statement of overriding considerations, all in accordance with the California Environmental Quality Act (CEQA). PP15-060 – District: Citywide

The City Council tentatively approved the memorandum from Mayor Sam Liccardo, dated December 11, 2015:

- (1) **Accept the Staff recommendation as described above in 10.2(a).**
- (2) **Direct Staff to return in the Spring with a work plan, in concert with the Green Vision update, to formulate a GHG-Reduction Goal with targets that would suffice -- if other major cities in industrialized nations set a similar target -- to ensure that global temperature increase does not exceed 2 degrees Celsius. This target should encompass goals for both 2030 and 2050 and should necessarily be more aggressive than that established by international agreement in Paris.**

Resolution No. 77517 was tentatively adopted.

- (b) Tentative approval of a General Plan Amendment to incorporate text revisions to the Envision San José 2040 General Plan including, but not limited to, the update and re-adoption of the City's Greenhouse Gas Reduction Strategy.

CEQA: Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Program EIR (Resolution No. 76041) certified by the City of San José on November 1, 2011. Planning Commission recommends approval (6-0-1) (Yesney recused). (Planning, Building and Code Enforcement). File Nos: PP15-060 and GPT15-002 – District: Citywide
The City Council tentatively adopted the General Plan Amendment.

10.3 Adopt a Resolution Approving All General Plan Amendment Actions on December 8, 2015 and December 15, 2015.

Recommendation: Adopt a resolution approving all General Plan Amendment actions taken on December 8, 2015 and December 15, 2015.

Resolution No. 77618 adopted, approving all General Plan Amendment actions taken on December 8, 2015 and December 15, 2015.

- **Notice of City Engineer’s Pending Decision on Final Maps**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10323	6055 Guadalupe Mines Road	10	La Encina Development LLC	7/5	SFD	Approve

- **Open Forum**

There was no public testimony from the floor.

- **Adjournment**

The Council of the City of San José was adjourned at 5:52 p.m.

EXHIBIT 9

Federated Alternative Pension Reform Settlement Framework Agreement

Background

In April 2015, the City began discussions with the bargaining units representing employees in the Federated City Employees' Retirement System to settle litigation surrounding Measure B, a pension reform ballot measure that passed in June 2012.

The City engaged in settlement discussions with the litigants in the Measure B litigation - AFSCME, on behalf of the Municipal Employees' Federation (MEF) and Confidential Employees' Organization (CEO); IFPTE, on behalf of the Association of Engineers and Architects (AEA), the Association of Maintenance Supervisory Personnel (AMSP), and the City Association of Management Personnel (CAMP); and the International Union of Operating Engineers, Local No. 3 (OE#3). In addition to the litigants, the City also engaged the Association of Building, Mechanical, and Electrical Inspectors (ABMEI); the Association of Legal Professionals (ALP); and the International Brotherhood of Electrical Workers (IBEW) in the Measure B settlement discussions.

The parties have agreed upon a Federated Alternative Pension Reform Framework (Framework) that presents a path toward the settlement of litigation over Measure B. The Framework is subject to a final overall global settlement with all parties related to the Measure B litigation. The Framework is specific to employees represented by ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3. The terms of the Framework also apply to unrepresented employees in Unit 99 and Units 81/82 except where noted.

It should be noted that the City reached agreement on a settlement framework with the San Jose Police Officers' Associations (SJPOA) and the International Association of Fire Fighters, Local 230 (Local 230) in July 2015 and which was approved by City Council in August 2015. Discussions are continuing with the Federated Retirees' Association.

Over the next 30+ years, the savings from the modification to Tier 2, closing of the retiree healthcare defined benefit plan, and continuation of the elimination of the Supplemental Retiree Benefit Reserve (SRBR) are estimated to be **\$1.3 billion**, for the Federated City Employees' Retirement System.

Proposed Implementation Plan

- The implementation plan is contingent on reaching an agreement with the other parties to litigation. The City has reached agreement on a settlement framework with SJPOA and Local 230, and the City and the Federated Retirees' Association have met several times to continue those discussions and will continue meeting.
- Once a global settlement is reached and before the quo warranto process begins in court, which is a legal proceeding used to overturn a ballot measure post-election, the parties will agree on ballot measure language for November 2016 that will include provisions to ensure:
 - Actuarial soundness of the pension plan
 - Only voter-approved retirement benefit enhancements
 - No retroactive retirement benefit enhancements
 - Any other mutually agreed upon language
- The parties will agree upon and submit a factual stipulation and stipulated judgment in the quo warranto case finding that Measure B is invalid.
 - This will be non-precedent setting and will not include a finding that the City acted in bad faith.

- If the quo warranto process does not result in an invalidation of Measure B, the November 2016 ballot measure would implement the Framework Agreement for employees in the Federated City Employees' Retirement System.

Rehires

Until the implementation of the alternative pension reform settlement framework is complete, employees who have left City service and return to the City, or new employees, will be placed in the current Tier 2. Implementation will require a court declaring Measure B to be void and/or the voters replacing Measure B. Any implementation will occur after the Council is allowed to modify the municipal code to permit employees to retroactively be placed into either the revised Tier 2 (new employees) or Tier 1 (if rehired and formerly Tier 1). This will create an amortized unfunded liability that the City and these employees will share equally.

The following is a summary of the Framework's key provisions that would affect current or future employees.

Tier 2 Key Points

- 2.0% accrual rate for each year of service with a 70% maximum
- Eligible for an unreduced retirement at age 62
- CPI or a "backloaded" 2.0% Cost of Living Adjustment (COLA), which is a service based formula where an employee would receive a lower COLA for earlier years of service and increases up to a maximum of 2% with additional years of service
- Eligible to retire with five (5) years of service
- 50/50 cost sharing of Normal Cost and Unfunded Liability
 - Ramp-Up of 0.33% per year for Unfunded Liability
- Revised Tier 2 will be retroactive for current Tier 2 employees who will share 50/50 in the amortized unfunded liability created by making the changes retroactive.
- Rehired former Tier 1 employees will go back into Tier 1. These employees will share 50/50 in the amortized unfunded liability created by making the changes retroactive for those Tier 1 employees who have since returned and gone into Tier 2.

Retiree Healthcare Key Points

- Closes the defined benefit retiree healthcare and dental plan (hereafter, collectively referred to as "retiree healthcare") and establishes a Voluntary Employee Beneficiary Association (VEBA) for new and current Tier 2 employees.
- Offer Tier 1 employees (and Tier 2A employees represented by OE#3 and ABMEI) a one-time irrevocable opt-out into the VEBA, pending IRS approval. The contribution rate for those who opt-out will be 4.5% in the VEBA. Those who stay in the defined benefit plan will have a contribution rate of 7.5%. The difference between the contribution amount for those who opt-out and those who stay in the defined benefit plan (3%) will be from post-tax earnings.
- All current Tier 2A and 2C employees will be removed from the defined benefit retiree healthcare plan. All Tier 2 employees (Tier 2A, 2B and 2C) will pay 2% into the VEBA. Unrepresented Tier 2 employees in Unit 99 and Units 81/2 will not have the option to contribute to the VEBA nor be mandated to make contributions into the VEBA.
- A new lowest cost healthcare plan will be offered with a \$3000 deductible - the current 85/15 cost sharing would not change for active employees.

- A floor will be set for the lowest cost healthcare plan so that the level of coverage does not go below the “silver” level of benefits as specified by the Affordable Care Act.
- Retirees will be offered an In-Lieu Premium Credit of 25% of the monthly premium for those who choose to forego the retiree healthcare plan which will be applied to future premiums.

Disability Process and Definition Key Points

- Reinstate the previous definition of disability, an employee injured or sick during service and unable to perform the duties of the position then held or any other position in the same classification of positions.
- The retirement board will appoint a 3-member independent medical review panel for disability retirement applications.
- Disability retirement applications must be submitted within one month of separation from the City and not deferred past four (4) years.

Supplemental Retiree Benefit Reserve (SRBR)/ Guaranteed Purchasing Power (GPP) Key Points

- The SRBR (“13th Paycheck”) will continue to be eliminated, preserving the achieved savings.
- A GPP program will be put in place so that current and future Tier 1 retirees can maintain 75% of purchasing power of their pension benefit.
 - There are currently approximately 68 retirees in the Federated City Employees’ Retirement System under 75%.

EXHIBIT 10

Alternative Pension Reform Settlement Framework Agreement

Background

In April 2015, the City began discussions with the San Jose Police Officers' Association (SJPOA) and the International Association of Fire Fighters, Local 230 (Local 230) to settle litigation surrounding Measure B, a pension reform ballot measure that passed in June 2012. On July 15, 2015, the parties agreed upon an Alternative Pension Reform Framework (Framework) that presents a path toward the settlement of litigation over Measure B. The Framework is subject to a final overall global settlement with all parties related to the Measure B litigation. The Framework is specific to employees represented by SJPOA and Local 230, however discussions are continuing with the Federated bargaining units and Federated Retirees' Association.

Over the next 30+ years, the savings from the modification to Tier 2, closing of the retiree healthcare defined benefit plan, and continuation of the elimination of the Supplemental Retiree Benefit Reserve (SRBR) are estimated to be **\$1.7 billion**, for Police and Fire.

Proposed Implementation Plan

- The implementation plan is contingent on reaching an agreement with the other parties to litigation. The City and the Federated bargaining units met on August 31, 2015 to continue those discussions and will continue meeting.
- Once a global settlement is reached and before the quo warranto process begins in court, which is a legal proceeding used to overturn a ballot measure post-election, the parties will agree on ballot measure language for November 2016 that will include provisions to ensure:
 - Actuarial soundness of the pension plan
 - Only voter-approved retirement benefit enhancements
 - No retroactive retirement benefit enhancements
 - Any other mutually agreed upon language
- The parties will agree upon and submit a factual stipulation and stipulated judgment in the quo warranto case finding that Measure B is invalid.
 - This will be non-precedent setting and will not include a finding that the City acted in bad faith.
- If the quo warranto process does not result in an invalidation of Measure B, the November 2016 ballot measure would implement the Framework Agreement for Police and Fire.

Rehires and Recruits

Until the implementation of the alternative pension reform settlement framework is complete, employees who have left City service and return to the Police or Fire Departments, or new employees, will be placed in the current Tier 2. Implementation will require a court declaring Measure B to be void and/or the voters replacing Measure B. Any implementation will occur after the Council is allowed to modify the municipal code to permit employees to retroactively be placed into either the revised Tier 2 (new employees) or Tier 1 (if rehired and formerly Tier 1). This will create an amortized unfunded liability that the City and these employees will share equally.

The following is a summary of the Framework's key provisions that would affect current or future employees.

Tier 2 Key Points

- “Backloaded” 2.7% at 57 formula with 80% maximum, which is a service-based formula where the employee earns a fixed benefit per year of services which is lower for earlier years of service and increases by a specified amount as an employee earns additional years of service.
- CPI or max 2.0% Cost of Living Adjustment
- Eligible to retire with five (5) years of service
- 50/50 cost sharing of Normal Cost and Unfunded Liability
 - Ramp-Up of 0.33% per year for Unfunded Liability
- Revised Tier 2 will be retroactive for current sworn Tier 2 employees who will share 50/50 in the amortized unfunded liability created by making the changes retroactive.
- Rehired former Tier 1 employees will go back into Tier 1. These employees will share 50/50 in the amortized unfunded liability created by making the changes retroactive for those Tier 1 employees who have since returned and gone into Tier 2.

Retiree Healthcare Key Points

- Closes the defined benefit retiree healthcare plan and establishes a Voluntary Employee Beneficiary Association (VEBA) for new and current Tier 2 employees. The contribution rate will be 4% into the VEBA.
- Offer Tier 1 employees a one-time irrevocable opt-out into the VEBA, pending IRS approval. The contribution rate for those who opt-out will be 5% in the VEBA. Those who stay in the defined benefit plan will have a contribution rate of 8%. The difference between the contribution amount for those who opt-out and those who stay in the defined benefit plan (3%) will be from post tax earnings.
- A new lowest cost healthcare plan will be offered with a \$3000 deductible - the current 85/15 cost sharing would not change for active employees.
- A floor will be set for the lowest cost healthcare plan so that the level of coverage does not go below the “silver” level of benefits as specified by the Affordable Care Act.
- Retirees will be offered an In-Lieu Premium Credit of 25% of the monthly premium for those who choose to forego the retiree healthcare plan.

Disability Process and Definition Key Points

- Reinstate the previous definition of disability, an employee injured or sick during service and unable to perform the duties of the position then held or any other position in the same classification of positions.
- The retirement board will appoint a 3-member independent medical review panel for disability retirement applications.
- Disability retirement applications must be submitted within one month of separation from the City and not deferred past four (4) years.
- A workers’ compensation offset will be applied to Tier 2 members up a maximum of \$10,000 per employee.
- The parties will convene a Public Safety Wellness Improvement Committee with goals to streamline the process, reduce costs, increase prevention and expedite an employee’s return to work.

Supplemental Retiree Benefit Reserve (SRBR)/Guaranteed Purchasing Power (GPP) Key Points

- The SRBR (“13th Paycheck”) will continue to be eliminated, preserving the achieved savings.
- A GPP program will be put in place so that current and future Tier 1 retirees can maintain 75% of purchasing power of their pension benefit.
 - There are currently approximately 56 retirees in the Police and Fire Plan under 75%.

EXHIBIT 11

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-JM-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

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>
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	

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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 12



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	SAM LICCARDO MAYOR	DISTRICT 8
MANH NGUYEN	DISTRICT 4	ROSE HERRERA VICE MAYOR	DISTRICT 9
MAGDALENA CARRASCO	DISTRICT 5	DONALD ROCHA	DISTRICT 10
		JOHNNY KHAMIS	

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 14th 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 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

- 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

- 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

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 4th Street (49 North 4th 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

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

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

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

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, shall the City of San José enact a ¼ percent sales tax for 9 years, 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

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

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

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

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

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

8. PUBLIC SAFETY SERVICES

9. REDEVELOPMENT – SUCCESSOR AGENCY

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

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

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.**

EXHIBIT 13

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RANDY RIDDLE (SBN 121788)
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8
9 BEFORE THE ATTORNEY GENERAL
10 OF THE STATE OF CALIFORNIA

11 SAN JOSE POLICE OFFICERS'
12 ASSOCIATION,

13 Plaintiff-Relator,

14 vs.

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

17 Defendants.

Case No.:

EXEMPT FROM FEES (GOV. CODE § 6103)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
SJPOA'S APPLICATION FOR LEAVE TO
SUE IN *QUO WARRANTO*; SHOWING OF
GOOD CAUSE WHY LEAVE TO SUE
SHOULD NOT BE GRANTED**

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1 **A. NEGOTIATIONS OVER A SUCCESSOR MEMORANDUM OF AGREEMENT**

2 The City and SJPOA commenced negotiations over a successor Memorandum of Agreement
3 (MOA), on January 11, 2011. [Statement of Undisputed Facts ¶ 1.] The City and SJPOA reached a
4 Tentative Agreement for a successor MOA on June 3, 2011, which included re-opener Side Letters on
5 several issues, including to continue meeting and conferring on pension and retiree healthcare benefits
6 for current and future employees. [Statement of Undisputed Facts ¶¶ 2-3.]

7 On June 9, 2011, prior to completion of the City/POA Tentative Agreement ratification process,
8 the City received a joint letter from the Presidents of SJPOA and the International Association of
9 Firefighters, Local 230 (hereinafter, "IAFF, Local 230") requesting to commence joint bargaining over
10 "a second tier of retirement benefits," SJPOA "opt-in proposal," and "a broad discussion that can lead
11 to a mutually agreeable plan to lawfully modify benefits for existing plan participants as well."
12 [Declaration of Alex Gurza in Opposition to SJPOA's Application for Leave to Sue in *Quo warranto*
13 (Gurza Decl.) ¶ 12, Exh. B.]

14 **B. THE CITY'S BALLOT MEASURE PROPOSAL**

15 On May 13, 2011, Mayor Chuck Reed and several councilmembers issued a memorandum on
16 "Fiscal Reforms," which suggested, *inter alia*, that the City Council approve a ballot measure
17 addressing retirement and pension benefits for current and new employees. [Statement of Undisputed
18 Facts ¶ 6.] On May 24, 2011, the City Council approved the Mayor's recommendation and directed
19 City staff to contact the City's unions to bargain over such a ballot measure. [Statement of Undisputed
20 Facts ¶ 7.] Although the Council initially targeted a November 2011 date for an election on the ballot
21 measure, the Council delayed the election to March 2012, and later moved the election to June 2012, to
22 allow additional time for collective bargaining. [Gurza Decl. ¶ 11.]

23 **C. NEGOTIATIONS OVER RETIREMENT REFORM AND THE PROPOSED BALLOT
24 MEASURE**

25 On June 20, 2011, the City and SJPOA met to begin additional negotiations on retirement
26 reform pursuant to the parties' re-opener agreement. [Statement of Undisputed Facts ¶ 8.] That day,
27 the City and SJPOA agreed to a "framework" that provided ground rules for negotiations. The parties
28 agreed to negotiate over both the proposed ballot measure and non-ballot measure retirement reforms at

1 the same table. In addition, the parties agreed to conclude negotiations on October 31, 2011, and
2 submit any remaining dispute to impasse resolution procedures at that time. The impasse resolution
3 procedures included mediation, followed by interest arbitration under San Jose City Charter Section
4 1111, if necessary. The parties specifically agreed that the proposed ballot measure would not be
5 subject to interest arbitration. [Statement of Undisputed Facts ¶¶ 8-9.]

6 Between June 20 and October 28, 2011, the parties participated in thirteen (13) negotiation
7 sessions regarding retirement reform and the proposed draft ballot measure. [Statement of Undisputed
8 Facts ¶ 11.] During this time the parties exchanged numerous proposals. [Statement of Undisputed
9 Facts ¶¶ 12-13.] On October 31, 2011, the parties reached impasse under the terms of the ground rules.
10 [Statement of Undisputed Facts ¶ 14.]

11 On November 15 & 16, 2011, the parties participated in mediation over retirement reform and
12 the proposed ballot measure. [Statement of Undisputed Facts ¶ 15.] In an attempt to reach a mediated
13 settlement, the City proposed potential changes to the ballot measure that were virtually identical to
14 those presented to the San Jose City Council in the November 22, 2011, version of the draft ballot
15 measure. [Statement of Undisputed Facts ¶ 18.] Specifically, the City proposed improving the opt-in
16 benefit formula from 1.5% to 2.0%, decreasing the minimum retirement age for members of SJPOA
17 and IAFF, Local 230 from age 60 to age 57, and increasing the COLA from a maximum of 1.0% to a
18 maximum of 1.5%. SJPOA was provided the opportunity to explore these changes in mediation, but
19 ultimately the parties were unsuccessful in breaking the impasse. [Statement of Undisputed Facts
20 ¶ 16.]

21 The City informed SJPOA and all other City unions that the City Council would consider the
22 November 22, 2011 version of the ballot measure at its December 6, 2011 meeting. [Statement of
23 Undisputed Facts ¶ 19.] On December 6, 2011, the City Council approved a ballot measure
24 substantially similar to the one provided to SJPOA on November 22, 2011. [Statement of Undisputed
25 Facts ¶ 22.] At that same meeting, and at the behest of several of the City's bargaining units, including
26 SJPOA, the City Council postponed the planned March 2012 election until June 2012, postponed the
27 submittal of the final ballot language to the registrar of voters, and directed staff to invite all bargaining
28

1 groups to re-engage in mediation regarding all retirement issues, including the related ballot measure.

2 [Statement of Undisputed Facts ¶¶ 21, 23.]

3 SJPOA initially resisted a second attempt at mediation, insisting that the parties instead meet
4 without a mediator. [Statement of Undisputed Facts ¶ 24.] After two meetings in late December 2011
5 and early January 2012, the parties agreed to mediation. At the request of SJPOA, and at a significant
6 cost, the parties engaged an independent mediator rather than Paul Roose, Supervisor of the State
7 Mediation and Conciliation Service, who had previously served as the parties' mediator. [Statement of
8 Undisputed Facts ¶¶ 25-26.] The parties participated in mediation on January 17 & 18, 2012, and
9 February 6 & 10, 2012. [Statement of Undisputed Facts ¶ 27.]

10 In an attempt to reach a mediated settlement, the City proposed potential changes to the ballot
11 measure that were identical to those presented to the San Jose City Council in the February 21, 2012,
12 version of the draft ballot measure. Specifically, the City proposed postponing the additional retirement
13 contributions for current employees for one year, delaying the phase out of certain benefit features for
14 employees choosing to opt into a lower level of benefits and improving the Tier 2, increasing the new
15 employee benefit formula from 1.5% to 2.0%, and increasing the COLA from a maximum of 1.0% to a
16 maximum of 1.5%. SJPOA was provided the opportunity to explore these changes in mediation, but
17 ultimately the parties again were unsuccessful in breaking the impasse. [Statement of Undisputed Facts
18 ¶¶ 28-29.]

19 On February 21, 2012, City Administrator Debra Figone issued a staff report to the City Council
20 recommending that the Council consider a revised Retirement Reform Ballot Measure for the June 5,
21 2012 election. [Statement of Undisputed Facts ¶ 30.]

22 On March 2, 2012, twenty-one days after mediation ended, SJPOA submitted a retirement
23 reform proposal. This proposal was in some regards a step backwards, as it included a proposal from
24 September 2011 to close the San Jose Police and Fire Department Retirement Plan and move to
25 CalPERS while maintaining a 90% maximum benefit level. [Statement of Undisputed Facts ¶ 32.]
26 SJPOA's March 2, 2012 proposal was almost identical to the one rejected by the City before mediation.
27 The City explained its reasons for rejecting SJPOA's March 2 proposal in a letter dated March 5, 2012.
28 [Statement of Undisputed Facts ¶ 33.]

1 On March 6, 2012, the Council approved those changes and submitted the revised measure,
2 designated Measure B, to voters on the June 5, 2012 ballot. [Statement of Undisputed Facts ¶ 34.]

3 On June 6, 2012, San Jose voters adopted Measure B by a 69.5% to 30.5% margin. [Statement
4 of Undisputed Facts ¶ 35.]

5 The projected retirement costs utilized during and throughout the negotiation and mediation
6 process with SJPOA were the most up-to-date information provided by the Retirement Board's
7 independent actuary, Cheiron, dated July 20, 2011. At no time did the City's bargaining team ever
8 refer to or use \$650 million as a projected future retirement cost. [Gurza Decl. ¶ 32, Exh. I.]

9 **D. PENDING LITIGATION OVER MEASURE B**

10 There are a number of pending proceedings in court and before the Public Employment
11 Relations Board (PERB), which challenge both the substantive validity of Measure B and the City's
12 bargaining conduct in relation to Measure B. Each of these proceedings is potentially dispositive of the
13 issue presented in SJPOA's Application for Leave to Sue in *Quo warranto*.

14 On March 16, 2012, SJPOA filed a Verified Petition for Writ of Mandate and Complaint for
15 Declaratory and Injunctive Relief, Case No. 1-12-CV-220795, in the Santa Clara County Superior
16 Court. On March 26, 2012, SJPOA filed an Amended Verified Petition for Writ of Mandate and
17 Complaint. The basis for this amended petition and complaint was the City's alleged failure to meet
18 and confer in good faith under the MMBA. [Declaration of Jonathan V. Holtzman in Opposition to
19 SJPOA's Application for Leave to Sue in *Quo Warranto* (Holtzman Decl.) ¶ 4.]

20 On June 6, 2012, SJPOA filed a Complaint for Declaratory and Injunctive Relief, Case No. 1-
21 12-CV-225926, in the Santa Clara County Superior Court. This complaint alleges, *inter alia*, violation
22 of various constitutional rights and violation of the MMBA. [Holtzman Decl. ¶ 5.]

23 Also on June 6, 2012, various members of the San Jose Police and Fire Department Retirement
24 Plan filed a Complaint for Declaratory and Injunctive Relief and Petition for Writ of
25 Mandate/Prohibition, Case No. 1-12-CV-225928, in the Santa Clara County Superior Court. This
26 complaint alleges that Measure B violates various constitutional rights of the plan members.
27 [Holtzman Decl. ¶ 6.]

28

1 On November 23, 2011, OE Local 3 filed an Unfair Practice Charge, UPC No. SF-CE-900-M,
2 with PERB. This Charge alleges, *inter alia*, that the City failed to meet and confer in good faith with
3 regard to Measure B. [Holtzman Decl. ¶ 7.]

4 On February 1, 2012, AFSCME Local 101 filed an Unfair Practice Charge, UPC No. SF-CE-
5 924-M, with PERB. This Charge alleges, *inter alia*, that the City failed to meet and confer in good
6 faith with regard to Measure B. [Holtzman Decl. ¶ 8.]

7 On June 4, 2012, IAFF Local 230 filed an Unfair Practice Charge, UPC No. SF-CE-969-M,
8 with PERB. This Charge alleges that the City failed to meet and confer in good faith with regard to
9 Measure B. [Holtzman Decl. ¶ 9.]

10 **III. THERE IS GOOD CAUSE TO DENY SJPOA'S**
11 **APPLICATION TO SUE IN *QUO WARRANTO***

12 **A. THE ATTORNEY GENERAL HAS CONTROL OF A *QUO WARRANTO* COMPLAINT**
13 **AND SHOULD DENY THIS APPLICATION BECAUSE THE FUNDAMENTAL**
14 **PRECEPTS FOR *QUO WARRANTO* ARE NOT MET**

15 The *quo warranto* complaint procedure is authorized by California Code of Civil Procedure 803,
16 providing in relevant part:

17 An action may be brought by the attorney-general, in the name of the
18 people of this state, upon his [or her] own information, or upon a
19 complaint of a private party, against any person who usurps, intrudes into,
20 or unlawfully holds or exercises any public office, civil or military, or any
21 franchise, or against any corporation, either de jure or de facto, which
22 usurps, intrudes into, or unlawfully holds or exercises any franchise,
23 within this state.

24 California Code of Regulations, Title 11, Section 2 provides for the filing of the application for
25 leave to sue and that

26 the proposed defendant may, within the period provided in Section 3
27 hereof, show cause, if any he have, why "leave to sue" should not be
28 granted in accordance with the application therefore.

Quo warranto may be an appropriate method for challenging the adoption of a Charter provision by the
voters. (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591,
595.) But when the complaint is made by a private party and the Attorney General is requested to
authorize the action, the request must be denied when the fundamental precepts for a *quo warranto*

1 action are not met. (74 Ops.Cal.Atty.Gen. 77 (1991) [*San Diego Sheriff's Assoc*]). Leave to sue can
2 be granted only where the proposed relator establishes that there is a substantial question of law or fact
3 which requires judicial resolution, and where the action in *quo warranto* would serve the overall public
4 interest of the People of this state. (72 Ops.Cal.Atty.Gen. 15, 19 (1989).)

5 The Attorney General has denied applications to sue in *quo warranto* where even one of the
6 fundamental precepts is not met. In *San Diego Sheriff's Assoc, supra*, the Attorney General denied the
7 application where a charter amendment adopting a police citizen's review board was within
8 management prerogative and did not require judicial resolution of compliance with the MMBA.
9 Similarly, in 75 Ops.Cal.Atty.Gen. 70 (1992), the application to challenge a statewide initiative adopting
10 new pension levels was not subject as a matter of law to a *quo warranto* complaint. In addition, it was
11 held not to be in the public interest to grant the application because the same issues were pending before
12 PERB.

13 Although a *quo warranto* complaint may be initiated by a private party, the Attorney General has
14 control over both whether to initiate the action and whether to maintain or appeal the action. (*People ex*
15 *rel. Cage v. Petroleum Rectifying Co. of California* (1937) 21 Cal. App. 2d 289; *Oakland Municipal*
16 *Improvement League v. City of Oakland* (1972) 23 Cal. App 3d 165.) The City does not disagree with
17 SJPOA's assertion that the Attorney General does not have "arbitrary and uncontrolled discretion" (*Int.*
18 *Assoc. of Firefighters v. City of Oakland* (1985) 174 Cal. App. 3d 687), but the corollary is that, when
19 supported by the facts and law, the Attorney General should exercise her discretion in favor of denying
20 an application for *quo warranto*.

21 In this case, the City has shown good cause supporting a denial of SJPOA's application for *quo*
22 *warranto*. The proposed complaint does not present a prima facie case under the appropriate *Seal Beach*
23 analysis, nor does it establish questions of fact or law which need judicial resolution. Furthermore, the
24 analysis below demonstrates that approving the application is not in the public interest because
25 accepting SJPOA's argument would undermine effective labor relations, and because there is pending
26 litigation that would resolve the disputed Charter amendment issue without a *quo warranto* action.

27 The undisputed facts demonstrate that the City engaged in extended and exhaustive bargaining
28 with SJPOA for many months, up to impasse, and continued to meet its obligations by participating in

1 mediation and discussions with SJPOA for many more months. Indeed, the parties met on 13 occasions
2 for bargaining, participated in eight additional mediation and bargaining sessions, and the City
3 submitted at least 3 ballot proposals before finally placing Measure B on the ballot.

4 SJPOA's citation to 76 Ops.Cal.Atty.Gen. 169 (1993) (P and A's, page 6) that whether a charter
5 amendment is valid presents substantial questions of fact and law in complying with the MMBA
6 curiously omits the following sentence that explains why there was a substantial issue under those
7 particular facts:

8 Specifically, the issues here are whether the city was required to give
9 notice to the unions prior to adopting the resolution proposing the charter
10 amendment repealing the eight-city formula and whether it was required to
11 meet and confer with the unions after the resolution was adopted.

(76 Ops.Cal. Atty. Gen. 169 at 172.)

12 In sharp contrast to this situation where the city allegedly failed to even give notice to the union
13 that it was adopting a charter amendment, the pension issue and Measure B were negotiated to impasse
14 and mediated with SJPOA for a total of nine months before the City finally submitted the measure to the
15 voters. In short, there is no basis for the Attorney General to approve the application for *quo warranto*
16 under the facts of this matter.

17 **B. THE UNDISPUTED FACTS DEMONSTRATE THAT THE CITY HAS FULLY**
18 **COMPLIED WITH ITS OBLIGATION UNDER *SEAL BEACH***

19 The MMBA obligates local agency employers to meet and confer over proposed charter
20 amendments that would directly impact terms and conditions of employment for their employees. (*Seal*
21 *Beach Police Officers Ass'n, supra*, 36 Cal.3d at p. 594.) SJPOA claims that the City did not complete
22 the meet and confer process before placing Measure B on the ballot. The undisputed facts and settled
23 legal principles compel the conclusion that, as a matter of law, the SJPOA's position is without merit.
24 Accordingly, the Attorney General should decline to grant SJPOA permission to file its requested
25 complaint.

26 SJPOA argues that the parties did not reach a valid impasse. Plaintiff's Memorandum of Points
27 and Authorities, page 8, lines 5-9. That argument, however, is belied by the undisputed fact that the
28 "framework" signed by SJPOA and the City when they began bargaining over the proposed ballot

1 measure and non-ballot measure retirement reforms provided that the parties would utilize impasse
2 resolution procedures, i.e. impasse would occur automatically, if the parties failed to reach agreement by
3 October 31, 2011. It is beyond dispute that this is precisely what occurred: the October 31 deadline
4 passed without an agreement by the parties. Accordingly, under the ground rule set by the parties
5 themselves, impasse occurred and the parties began mediation.

6 After a bargaining impasse, “changed circumstances” may arise that show bargaining may no
7 longer be futile; in such circumstances, the duty to meet and confer is revived. (*Public Employment*
8 *Relations Bd. v. Modesto City School Dists.* (1982) 136 Cal.App.3d 881, 899.) However, in California’s
9 public sector, it is well-established that only a change in position by one of the parties which
10 demonstrates that agreement may now be possible – not a change in the background circumstances
11 related to the bargaining – is sufficient to break an impasse. (*State of California (Department of*
12 *Personnel Administration)* (2010) PERB Decision No. 2102-S, 34 PERC 62; *Rowland Unified School*
13 *District* (1994) PERB Decision No. 1053, 18 PERC ¶ 25126.) As PERB has explained, “[t]he
14 employer’s duty to resume negotiations following good faith completion of impasse arises *only if the*
15 *union’s proposals contained a concession* from its earlier position which demonstrates that
16 circumstances have changed and agreement may be possible.” (*State of California (Department of*
17 *Corrections & Rehabilitation)* (2010) PERB Dec. No. 2102-S, 34 PERC 62 [italics added].)

18 Here, the SJPOA’s claim is based on the fact that, during the three months the parties were
19 engaged in mediation, several events occurred that changed the circumstances: the City reported a \$10
20 million surplus in its budget, a television news report claimed the City misrepresented its projected
21 pension costs, and the Boards’ actuaries produced updated estimated pension costs lower than some
22 previous estimates the City provided to SJPOA and the media. However, SJPOA does not allege that
23 any of these events, or anything else for that matter, actually changed the positions of the parties such
24 that agreement became possible.

25 Indeed, SJPOA cannot credibly allege that it changed its position in a way that would indicate
26 further bargaining would not be futile. Moreover, the City continued to provide SJPOA with amended
27 ballot language during mediation – amendments that necessarily reflected discussions with all of its
28 unions, and amendments that SJPOA continuously rejected. Despite that continued movement,

1 SJPOA's final offer, made two days before the Council was to consider further amendments to the ballot
2 language prior to placing the measure on the ballot, was essentially the same pre-mediation offer the
3 City rejected in October 2011. That plan would, in many ways, actually have constituted an
4 *improvement* to current employees' pensions, rather than a cost-saving reduction, moving the parties
5 further apart. Accordingly, it was clear to the very end that SJPOA had not made any movement that
6 could break the impasse.

7 Any argument to the contrary is completely undercut by the fact that the parties participated in
8 mediation *after* the SJPOA made its proposals and were nonetheless unable to reach agreement.

9 Although the SJPOA argues that it was entitled to return to "negotiations" rather than "mediation" with
10 the City following its proposals of November 11, November 18, and December 1, 2011, this distinction
11 is meaningless because, in the public sector, mediation is merely a continuation of the bargaining
12 process utilizing a neutral third party, not a separate and distinct forum for resolving a labor dispute.
13 (*Rio School District* (2008) PERB Dec. No. 1986; *Modesto City Schools District* (1981) PERB Dec.
14 No. 291.)

15 Moreover, the fact that the parties attempted to reach agreement with the assistance of a neutral
16 mediator and were unable to do so establishes that the parties' revised proposals before mediation were
17 insufficient to break the impasse between them. Additionally, the failed mediation establishes that, even
18 if impasse was broken, the parties were once again at impasse by February 2012.

19 The Union makes much of the fact that the City proposed improvements (from the Union's
20 perspective) in the ballot measure over the months of mediation. Plaintiff's Memo of Points and
21 Authorities, page 8, lines 5-9. That shows the City was behaving with the ultimate in good faith: Even
22 though impasse had been reached and the City's legal obligations to negotiate had ended, the City chose
23 to go far beyond its legal obligations. What is equally clear based on the Union's public final offer to
24 the City following mediation is that the City's movement was not reciprocated.

25 The circumstances and conduct of the parties established by the undisputed facts here – and the
26 application of settled principles of law to these facts – stand in stark contrast to *Seal Beach*, as well as
27 other instances where the Attorney General has granted leave to sue *quo warranto*. Here, unlike those
28 situations, there is simply no factual or legal basis to grant leave to the SJPOA.

1 In *Seal Beach*, there was no effort whatsoever by the city to negotiate placement of the
2 challenged measure on the ballot. Rather, it was the position of the City that “the city council had the
3 absolute, unabridged constitutional authority to propose charter amendments to its electorate, which
4 authority could not be impaired or limited by the requirements of the MMBA.” (36 Cal.3d at 596.)

5 Similarly, this matter differs significantly from the recent decision of the Attorney General to
6 grant leave to sue in *quo warranto* to the Bakersfield Police Officers Association. (2012 WL 2184570
7 (June 11, 2012). In that matter, far from the material facts being undisputed, the Attorney General noted
8 that there was “sharp” disagreement between the parties. (See also 76 Ops.Cal.Atty.Gen. 169
9 (1993)[noting that *quo warranto* is appropriate where there are “substantial questions of fact and law”].)
10 Again, given the body of facts that cannot be credibly disputed here, that cannot be said to be the case in
11 this matter.

12 Finally, and critically, in determining whether to grant SJPOA’s request, it is imperative to
13 recognize the unique nature of *Seal Beach* bargaining. The City Council was not bargaining over an
14 MOU between a union and the City. Rather, the Council was proposing to the voters an amendment to
15 the San Jose Charter, which is the City’s constitution. (*Brown v. City of Berkeley* (1976) 57 Cal.App.3d
16 223, 231.) The views of all City Unions needed to be considered, and the thinking of the Council itself
17 evolved (in the direction of the Unions) through these negotiations. It was entirely appropriate for the
18 Council to actually incorporate changes proposed by the Unions, even though those changes were not
19 ultimately sufficient to reach an overall agreement.

20 Article XI, section 3 of the California Constitution recognizes that the amendment of the City’s
21 constitution is a legislative right reserved solely to the City’s voters, to be effectuated only through the
22 initiative process or proposal of the city council, and constrained by strict election deadlines. And
23 Article XI, section 5 of the California Constitution gives the voters the additional “plenary” authority to
24 exercise this right to establish employee compensation, including benefits.

25 In this case, 69.5% of San Jose voters exercised this right in favor of approving critically
26 important changes to their City constitution. Neither courts – nor the Office of the Attorney General –
27 should take action to question the exercise of this constitutional right unless the party challenging it has
28

1 affirmatively demonstrated its invalidity. (See *Associated Home Builders etc., Inc. v. City of Livermore*,
2 18 Cal.3d 582, 591.) Demonstrably, that simply has not happened here.

3 **C. SJPOA’S APPLICATION FAILS TO MEET THE *QUO WARRANTO* “PUBLIC**
4 **INTEREST” TEST**

5 **1. Leave For SJPOA To Sue In *Quo warranto* Should Be Denied Where It Will Result**
6 **In Multiple Proceedings**

7 As demonstrated above, SJPOA’s Application For Leave To Sue in *Quo warranto* should be
8 denied because it fails to establish a substantial question of fact or law. Even if SJPOA could meet this
9 first fundamental requirement of *quo warranto*, the application should nevertheless be denied for failure
10 to demonstrate that approving the application would serve the overall public interest.

11 As stated in *City of Campbell v. Mosk* (1961), 197 Cal.App. 2d 640, the mere existence of a
12 justiciable dispute does not establish that the public interest requires a judicial resolution of the dispute
13 or that leave be automatically granted for the relator to sue in *quo warranto*. It is clear that the Attorney
14 General can deny an application to sue in *quo warranto* based on the failure to meet the “serve the
15 overall public interest” prong of the two-part test. (*City of Campbell v. Mosk* (1961) 197 Cal.App.2d
16 640; 73 Ops.Cal.Atty.Gen. 188 (1990).

17 More specifically, the Attorney General denied an application to sue to challenge a statewide
18 initiative affecting wages and working conditions of state employees where the same issue was pending
19 before an administrative agency, PERB. (75 Ops.Cal. Atty.Gen. 70 (1992).) The Attorney General
20 concluded “(w)here such alternatives have been undertaken, we do not deem it within the public interest
21 to try the same issues in multiple proceedings.” The Attorney General has concluded that it is not in the
22 public interest to authorize multiple proceedings even when the issue in the *quo warranto* application is
23 not identical to the issue pending in another forum, provided that the underlying issue will be decided in
24 the other forum. (73 Ops.Cal.Atty.Gen. 188 (1990.)

25 The relief that SJPOA prays for in its Verified Complaint in *Quo warranto* is for a judicial
26 determination that San Jose Charter Measure B adopted by the voters on June 5, 2012, is void and of no
27 effect. The plaintiff in this *quo warranto* application, the San Jose Police Officers’ Association, has
28 previously filed on June 6, 2012, and is prosecuting its Complaint for Declaratory and Injunctive Relief

1 in Santa Clara Superior Court in the action *San Jose Police Officers Association vs. City of San Jose,*
2 *Board of Administration for Police and Fire Department Retirement Plan of City of San Jose et al.*
3 (Case No. 1-12-CV-225926.) Each of the causes of action in that lawsuit seeks invalidation of Measure
4 B. For example, the seventh cause of action in the complaint alleges a “Violation of MMBA” by
5 increasing employee retirement contributions and allegedly eliminating SJPOA’s ability to bargain with
6 the City over retiree health care benefits. SJPOA asks for a declaration and injunction prohibiting the
7 City from applying Charter Measure B to SJPOA members working for the City before June 5, 2012
8 (effectively the entire City police force as of the date of the vote on the Charter measure).

9 Consequently, SJPOA’s *quo warranto* complaint will be directly and dispositively affected by
10 the result of its pending Superior Court litigation over the legality of Charter Measure B. Approving
11 SJPOA’s application to sue in *quo warranto* would result in the exact multiple proceedings the Attorney
12 General has previously determined to not be in the public interest. (75 Ops.Cal.Atty.Gen. (1992).)

13 In addition, SJPOA filed and has pending in Santa Clara County Superior Court a Petition for
14 Writ of Mandate alleging the City’s failure to comply with the MMBA, Case No. 1-2-CV-220795.
15 Resolution of this writ of mandate action will be dispositive of SJPOA’s MMBA claim.

16 Furthermore, there is another judicial action pending that may also be dispositive of the claims in
17 SJPOA’s *quo warranto* complaint. In *Sapien et al. vs. City of San Jose*, Case. No. 1-12-CV-225928,
18 filed June 6, 2012, plaintiff members of the San Jose Police and Fire Department Retirement Plan are
19 seeking declaratory and injunctive relief that Charter Measure B cannot be applied because it violates
20 constitutional and vested contractual rights. It follows that the disposition of this pending litigation may
21 significantly impact the status and disposition of the *quo warranto* complaint, and would also result in
22 multiple judicial proceedings.

23 Finally, there are three matters pending before PERB that raise the exact issue SJPOA alleges in
24 its *quo warranto* complaint- whether the City complied with MMBA requirements prior to placing the
25 matter on the ballot. These were filed by OE#3, UPC 900-M, AFSCME, UPC 924-M, and IAFF, UPC
26 969-M. The Attorney General should follow the precedent established in 75 Ops. Cal. AG 70, Opinion
27 92-104, where application was denied based on the pending PERB review.

28

1 **2. Leave For SJPOA To Sue In *Quo Warranto* Should Be Denied Where It Would Be**
2 **Damaging To Public Policy To Grant The Application**

3 Mere demonstration of a question of law or fact does not by itself support Attorney General
4 approval of a *quo warranto* application. There must also be no other proceeding through which the
5 proposed relator could obtain relief, as shown above, and the issues for determination must serve the
6 overall public interest. SJPOA's application to sue in *quo warranto* additionally fails the "overall public
7 interest" test. (72 Ops.Cal.Atty.Gen. 15, 19 (1989).)

8 SJPOA argues that leave to sue in *quo warranto* should be granted because "Measure B would
9 reduce pension benefits for current employees and retirees, it implicates benefits that are indisputably
10 subject to protection under the 'contracts' clause of the California State Constitution." Plaintiff's Memo
11 of Points and Authorities, page 10, lines 22-24. But this is not an issue that SJPOA's allegations under
12 the MMBA can resolve. On the contrary, the constitutional impairment of contracts issue is what is
13 alleged and will be litigated in SJPOA's other complaint currently pending in Santa Clara County
14 Superior Court, *San Jose Police Officers Association vs. City of San Jose, Board of Administration for*
15 *Police and Fire Department Retirement Plan of City of San Jose et al.*, Case No. 1-12-CV-225926.
16 Nowhere in SJPOA's Verified Complaint is there any mention of constitutional impairment of contract
17 or that granting leave to sue will address or resolve any impairment of contract dispute. Thus, SJPOA's
18 reliance on the public importance of the impairment of contract issue for the *quo warranto* complaint is
19 simply wrong, as it is not an issue raised in its *quo warranto* complaint and is in fact the subject of its
20 other currently filed and pending action in Santa Clara County Superior Court.

21 That leaves as the sole remaining overall public interest justification "whether the City satisfied
22 its obligations under the MMBA." Plaintiff's Memo of Points and Authorities, page 10, lines 18-20.
23 However, as demonstrated in the *Seal Beach* discussion above, there is no legitimate factual dispute
24 about whether or not the City satisfied its bargaining obligation prior to placing Charter Measure B on
25 the ballot in June, 2012.

26 SJPOA's attempt to argue that this case is similar to the Bakersfield Police Officers Association
27 application to sue in *quo warranto* misses the mark for multiple reasons. That matter is, in fact, readily
28 distinguishable from the situation presented here.

1 First, *Seal Beach* held only that that the MMBA and constitutional right to place a Charter
2 amendment on the ballot were not mutually exclusive and that there had to be a reasonable bargaining
3 effort prior to placing a ballot measure affecting subjects of MMBA bargaining. In the Bakersfield case,
4 the City first informed the union of a possible ballot measure on May 6, 2010, and set a meet and confer
5 date of June 16, 2010. The Council voted on June 9, 2010 to place the Charter measure on the ballot,
6 before a single meet and confer session with the union had taken place and approximately one month
7 after first providing notice of the ballot measure. The factual dispute in Bakersfield was over whether
8 the union was responsible for failing to meet and confer prior to the vote, and whether general
9 discussions about pension reform constituted met and confer over the ballot measure.

10 In direct contrast to the Bakersfield facts, SJPOA does not dispute that 1) it was provided with
11 notice of the possible ballot measure in July, 2011, almost one year prior to the election on the ballot
12 measure (Verified Complaint, para. 26); 2) SJPOA met, and conferred, 13 times with the City between
13 July 13, 2011 and October 20, 2011 (Verified Complaint, para. 30); and 3) the City continued to discuss
14 the ballot measure with SJPOA and participated in mediation and meetings 8 times from December
15 2011 through February, 2012. The public policy issue in Bakersfield was whether the City's not having
16 a single meet and confer session on the ballot measure was a breach of MMBA and *Seal Beach*. Where
17 the City of San Jose bargained a minimum of 21 times over the course of nine months prior to placing
18 the ballot measure, there is no overall public policy interest in enforcing meet and confer requirements
19 because they took place.

20 Furthermore, SJPOA's argues that – despite extensive meet and confer sessions and mediation
21 sessions occurring about the proposed ballot measure – the City's election after impasse to incorporate
22 some concessions in the ballot measure prevented Council action in adopting the ballot measure with
23 significant concessions in favor of SJPOA. The union's position is directly contrary to the public
24 interest in the collective bargaining process, and the intent of the Legislature in enacting the MMBA. If
25 SJPOA's argument is successful, a public employer reaching impasse with a union after extensive
26 bargaining about a ballot measure will be precluded from agreeing to further mediation or modifying the
27 ballot proposal to incorporate concessions favoring the employees because of the risk that it will then be
28 unable to move forward with the ballot measure. Such a result would not serve the overall public

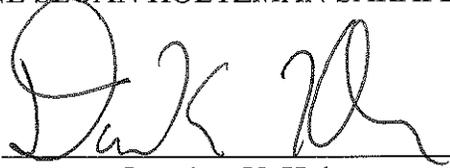
1 interest in permitting continued bargaining under the MMBA after impasse while moving forward with a
2 ballot measure after reasonable bargaining efforts have been made.

3
4 **IV. CONCLUSION**

5 The undisputed facts, settled legal principles, multiple pending complaints on the same issues in
6 other forums, and the lack of a demonstrated public interest compel the conclusion that the Attorney
7 General should deny SJPOA's request for leave to sue in *quo warranto*.

8 Dated: July 6, 2012

RENNE SLOAN HOLTZMAN SAKAI LLP

9
10
11 By: 

Jonathan V. Holtzman
Randy Riddle
David Kahn
Albert Yang
Attorney for Defendant
CITY OF SAN JOSE

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RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

CERTIFICATE OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 6, 2012, I served the following document(s) by the method indicated below:

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SJPOA'S APPLICATION FOR LEAVE TO SUE IN *QUO WARRANTO*; SHOWING OF GOOD CAUSE WHY LEAVE TO SUE SHOULD NOT BE GRANTED

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by electronic transmission via e-mail attachment (agreed by the parties served in this matter)

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Attorneys for Petitioner SAN JOSE POLICE OFFICERS' ASSOCIATION

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 6, 2012, at San Francisco, California.

Rochelle Redmayne

EXHIBIT 14

1 JONATHAN V. HOLTZMAN (SBN 99795)
RANDY E. RIDDLE (SBN 121788)
2 DAVID E. KAHN (SBN 98128)
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7 CITY OF SAN JOSE

8 BEFORE THE ATTORNEY GENERAL
9 OF THE STATE OF CALIFORNIA
10

11 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

12 Plaintiff-Relator,

13 vs.

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

16 Defendants.
17

Case No.:

EXEMPT FROM FEES (GOV. CODE § 6103)

**STATEMENT OF UNDISPUTED FACTS IN
OPPOSITION TO SJPOA'S APPLICATION
FOR LEAVE TO SUE IN *QUO WARRANTO***

18 The following statement of undisputed facts is drawn from the San Jose Police Officers'
19 Association's (SJPOA) Verified Statement of Facts in Support of Application for Leave to Sue in *Quo*
20 *Warranto* (SJPOA Statement of Facts) and the Declaration of Alex Gurza in Opposition to SJPOA's
21 Application for Leave to Sue in *Quo Warranto* (Gurza Decl.). The facts stated below represent points in
22 which the parties' pleadings in this case are in agreement, and/or points which the parties have not
23 disputed in related proceedings.

24 1. In early 2011, the City and SJPOA discussed changes to retirement benefits as a part of
25 ongoing negotiations over the parties' overall memorandum of understanding (MOU). [Gurza Decl.

26 ¶ 4.]
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1 2. In an effort to reach an agreement on a successor contract, on June 3, 2011, the parties
2 agreed to side-letter “re-opener” agreements on several issues, including retirement and pension reform.
3 [Gurza Decl. ¶¶ 5-7; SJPOA Statement of Facts ¶ 8, Exh. 4.]

4 3. Under the retirement re-opener agreement, either party could request continued
5 negotiations over retirement reform issues during the life of the MOU. [Gurza Decl. ¶ 7; SJPOA
6 Statement of Facts ¶ 8, Exh 4.]

7 4. The retirement re-opener contained a deadline after which, if the parties had not reached
8 an agreement, SJPOA would have the option of accepting a specified lower level of retirement benefits
9 for current employees to voluntarily elect. [Gurza Decl. ¶ 8; SJPOA Statement of Facts ¶ 9, Exh 4.]

10 5. This deadline was extended on multiple occasions by agreement of the parties. [Gurza
11 Decl. ¶ 8.]

12 6. On May 13, 2011, Mayor Chuck Reed and several councilmembers issued a
13 memorandum regarding “Fiscal Reforms,” which recommended that the City Council approve a ballot
14 measure addressing retirement benefits for new and current employees. [Gurza Decl. ¶ 9; SJPOA
15 Statement of Facts ¶ 5, Exh 2.]

16 7. On May 24, 2011, the City Council approved the Mayor’s recommendation and directed
17 City staff to draft a proposed ballot measure and contact City unions to bargain over such a ballot
18 measure. [Gurza Decl. ¶ 10, Exh. A; SJPOA Statement of Facts ¶ 5, Exh 2.]

19 8. On June 20, 2011, the parties met to begin negotiations over retirement benefits. The
20 discussion included the City Council’s direction regarding the ballot measure. The parties agreed to a
21 “Pledge of Cooperation and Agreement Upon a Framework for Retirement Reform and Related Ballot
22 Measure Negotiations” (Framework). [Gurza Decl. ¶¶ 13-14; SJPOA Statement of Facts ¶ 10, Exh 5.]

23 9. The Framework stated that negotiations would complete by October 31, 2011, and that if
24 the parties had not reached agreement by that date, that they would proceed to impasse procedures. The
25 Framework also stated that “Charter Section 1111 [providing for interest arbitration as an impasse
26 procedure] shall not apply to bargaining over ballot measures.” Finally, the Framework stated that “the
27 Council may, pursuant to its constitutional authority, place charter amendments on the ballot regarding
28

1 retirement at the conclusion of these negotiations and mediation.” [Gurza Decl. ¶ 14; SJPOA Statement
2 of Facts ¶ 10, Exh 5.]

3 10. On July 6, 2011, the City provided SJPOA with a draft ballot measure that would modify
4 retirement benefits by, *inter alia*: 1) establishing parameters for a second tier retirement benefit for new
5 employees; 2) creating a voluntary “opt in” program for current employees; 3) increasing employee
6 contributions for those who choose to remain in the current level of benefits, and 4) requiring voter
7 approval of any changes to pension benefits. [Gurza Decl. ¶ 16; SJPOA Statement of Facts ¶ 12, Exh 6.]

8 11. Between June 20, 2011 and October 31, 2011, the parties met for thirteen (13)
9 negotiation sessions on retirement reform proposals, including the City’s proposed ballot measure.
10 [Gurza Decl. ¶ 15, Exh. C; SJPOA Statement of Facts, ¶ 14.]

11 12. During this time, the City provided SJPOA with a number of revised ballot measures in
12 response to comments received from SJPOA, from other unions, and from the public. In particular, the
13 City provided revised language on September 9, October 5, October 20, and October 27, 2011. [Gurza
14 Decl. ¶ 16; SJPOA Statement of Facts ¶¶ 14b, 19.]

15 13. During this time, SJPOA, in conjunction with IAFF, provided several proposals on
16 retirement benefits. SJPOA provided proposals on September 27 and October 24, 2011 [Gurza Decl.
17 ¶ 17, Exh. D; SJPOA Statement of Facts ¶¶ 14a, Exh. 7]

18 14. On October 31, 2011, the parties reached impasse and proceeded to mediation, pursuant
19 to the terms of the Framework. [Gurza Decl. ¶ 18, Exh. E.]

20 15. On November 15 and 16, 2011, the parties participated in mediation to discuss retirement
21 reform but did not reach an agreement. [Gurza Decl. ¶ 19; SJPOA Statement of Facts ¶ 17.]

22 16. During mediation, in an attempt to reach an agreement, the City offered a number of
23 concessions. Specifically, the City proposed improving the opt-in benefit formula from 1.5% to 2.0%,
24 decreasing the minimum retirement age for members of SJPOA and IAFF, Local 230 from age 60 to age
25 57, and increasing the COLA from a maximum of 1.0% to a maximum of 1.5%. These concessions did
26 not result in an agreement. [Gurza Decl. ¶ 20]

27 17. On November 11 and 18, 2011, SJPOA provided additional proposals regarding
28 retirement benefits. SJPOA’s November 11, 2011 proposal included benefits under the CalPERS

1 system, which the City had previously rejected as an option. SJPOA's November 18, 2011 proposal
2 abandoned the move to CalPERS and, for the first time, included the proposal to effectuate changes by
3 ballot measure. [Gurza Decl. ¶ 17, Exh. D; SJPOA Statement of Facts ¶¶ 15, Exhs. 10 & 11.]

4 18. On November 22, 2011, the City provided a revised draft ballot measure, which
5 incorporated the concessions it made during mediation. [Gurza Decl. ¶ 21; SJPOA Statement of Facts
6 ¶¶ 19-20, Exh. 13.]

7 19. The City informed SJPOA that the City Council would consider placing the revised
8 measure on the March 2012 ballot at its December 6, 2011 meeting. [Gurza Decl. ¶ 21; SJPOA
9 Statement of Facts ¶ 20.]

10 20. On December 1, 2011, SJPOA provided an additional proposal. [Gurza Decl. ¶ 17, Exh.
11 D; SJPOA Statement of Facts ¶ 21, Exh. 14.]

12 21. On December 5, 2011, several unions wrote to the Mayor and City Council indicating
13 that agreement on retirement reform would be possible with additional time and a second attempt at
14 mediation. Several unions also made comments to this effect during the City Council meeting on
15 December 6, 2011. [Gurza Decl. ¶¶ 22-23, Exh. F.]

16 22. On December 6, 2011, the City Council adopted Resolution 76087, which placed a
17 measure dated December 5, 2011 on the June 2012 ballot. The ballot measure dated December 5, 2011
18 is substantially similar to the measure provided to SJPOA on November 22, 2011. [Gurza Decl. ¶ 23,
19 Exh. G; SJPOA Statement of Facts ¶ 26.]

20 23. Although the City Council originally intended to place the measure on the March 2012
21 ballot, the Council delayed the election to June 2012 to provide time for additional mediation in
22 accordance with the unions' request. The Council further directed staff to engage all unions in
23 additional mediation. [Gurza Decl. ¶ 23, Exh. G; SJPOA Statement of Facts ¶ 26, Exh. 16.]

24 24. On December 13, 2011, SJPOA sent the City a letter asserting that the parties were not at
25 impasse and requesting the "resumption of bargaining." [SJPOA Statement of Facts ¶ 27, Exh. 17.]

26 25. The parties met on two occasions, in late December 2011 and early January 2012 prior to
27 engaging in renewed mediation. [Gurza Decl. ¶ 24; SJPOA Statement of Facts ¶ 28.]
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1 26. Eventually, the parties agreed to engage in mediation. At the request of SJPOA, and at
2 substantial cost to both parties, the parties retained an independent mediator, rather than Paul Roose,
3 Supervisor of the State Mediation and Conciliation Service, who had previously served as the parties'
4 mediator. [Gurza Decl. ¶ 24; SJPOA Statement of Facts, Exh. 17.]

5 27. The parties engaged in mediation on January 17, January 18, February 6 and February 10,
6 2012. [Gurza Decl. ¶ 24.]

7 28. Once again, in an effort to reach agreement, the City offered a number of concessions in
8 mediation. Specifically, on February 10, 2012, the City proposed postponing the additional retirement
9 contributions for current employees remaining at the current level of benefits for one year, delaying the
10 phase out of certain benefit features for employees choosing to opt into a lower level of benefits and
11 improving the Tier 2, new employee benefit formula from 1.5% to 2.0%, and increasing the COLA from
12 a maximum of 1.0% to a maximum of 1.5%. Once again the parties were unable to reach agreement.
13 [Gurza Decl. ¶ 25.]

14 29. Once again, despite the lack of an agreement during mediation, the City incorporated its
15 concessions into a post-mediation revision of the proposed ballot measure. [Gurza Decl. ¶ 26; SJPOA
16 Statement of Facts ¶¶ 30-31.]

17 30. The City transmitted this revised measure to SJPOA on February 21, 2012, indicating
18 that the City Council would vote, at its March 6, 2012 meeting, on whether to replace the December 6,
19 2011 draft with the February 21, 2012 draft for the June 2012 ballot. [Gurza Decl. ¶ 26; SJPOA
20 Statement of Facts ¶ 30-31.]

21 31. On February 24, 2012, SJPOA sent a letter to the City asserting that the Union “had no
22 opportunity to bargain about this new ballot language,” and requesting that the City “meet and confer”
23 with the Union over the February 21, 2012 draft. [Gurza Decl. ¶ 27; SJPOA Statement of Facts ¶ 33,
24 Exh. 22.]

25 32. On March 2, 2012, IAFF and SJPOA sent a letter to the City transmitting a revised
26 proposal on retirement benefits. The proposal once again involved a shift to the CalPERS system. The
27 proposal included a higher level of maximum benefit for the opt-in tier compared to SJPOA’s previous
28 proposal. [Gurza Decl. ¶ 28; SJPOA Statement of Facts ¶ 36, Exh. 25.]

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33. On March 5, 2012, the City rejected SJPOA's March 2 proposal and provided a lengthy explanation for its rejection. [SJPOA Statement of Facts ¶ 38, Exh. 27.]

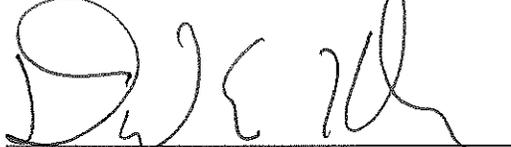
34. On March 6, 2012, after nine months of negotiation and twenty-one (21) meetings with the SJPOA on retirement and pension reform, the City Council voted to place Measure B on the June 5, 2012 ballot. [Gurza Decl. ¶ 29, Exh. H; SJPOA Statement of Facts ¶ 39.]

35. On June 5, 2012, San Jose Voters adopted Measure B by a margin of 69.58% to 30.42%. [Gurza Decl. ¶ 31.]

36. On June 5, 2012, pursuant to direction from the City Council, the City filed a declaratory relief action in the Northern District of California, case number 5:12-CV-02904-LHK, seeking a judicial determination of Measure B's substantive validity. [Gurza Decl. ¶ 30.]

Dated: July 6, 2012

RENNE SLOAN HOLTZMAN SAKAI LLP

By: 

Jonathan V. Holtzman
Randy E. Riddle
David E. Kahn
Albert S. Yang
Attorney for Defendant
CITY OF SAN JOSE

CERTIFICATE OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 6, 2012, I served the following document(s) by the method indicated below:

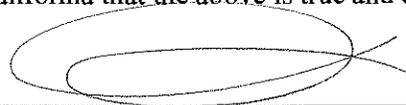
SEPARATE STATEMENT IN OPPOSITION TO SJPOA'S APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO; SHOWING OF GOOD CAUSE WHY LEAVE TO SUE SHOULD NOT BE GRANTED

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by transmitting via facsimile on this date from the fax number (415) 678-3838 the document(s) listed above to the fax number(s) set forth below. The transmission was reported complete and without error. The transmitting fax machine complies with Cal. R. Ct. 2003(3)
- by electronic transmission via e-mail attachment (agreed by the parties served in this matter)

Gregg McLean Adam, SBN 203436
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Attorneys for Petitioner SAN JOSE POLICE
OFFICERS' ASSOCIATION

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
Executed on July 6, 2012, at San Francisco, California.



Rochelle Redmayne

Certificate of Service

SEPARATE STATEMENT IN OPPOSITION TO SIPOA'S APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO;
SHOWING OF GOOD CAUSE WHY LEAVE TO SUE SHOULD NOT BE GRANTED

EXHIBIT 15

1 JONATHAN V. HOLTZMAN (SBN 99795)
RANDY E. RIDDLE (SBN 121788)
2 DAVID E. KAHN (SBN 98128)
ALBERT S. YANG (SBN 281265)
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4 San Francisco, CA 94104
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6 Attorneys for Respondent
7 CITY OF SAN JOSE

8 BEFORE THE ATTORNEY GENERAL
9 OF THE STATE OF CALIFORNIA

10 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

11
12 Plaintiff-Relator,

13 v.

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

15 Defendants.
16

Case No.:

EXEMPT FROM FEES (GOV. CODE §6103)

**DECLARATION OF ALEX GURZA IN
OPPOSITION TO SAN JOSE POLICE
OFFICERS' ASSOCIATION'S
APPLICATION FOR LEAVE TO SUE IN
QUO WARRANTO**

17 I Alex Gurza declare as follows,

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

20 2. I am currently a Deputy City Manager and serve as the Director of the Office of
21 Employee Relations for the City of San Jose (hereinafter, "City"). The Office of Employee Relations is
22 responsible for, among other things, negotiating on behalf of the City with the City's bargaining units,
23 like the San Jose Police Officers' Association (hereinafter, "SJPOA").

24 3. I have been extensively involved in the City's negotiations with the SJPOA regarding a
25 successor Memorandum of Agreement ("MOA") and retirement reform, including the ballot measure
26 considered by voters at the June 5, 2012 special election.
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1 Renewed Negotiations on Retirement Reform

2 12. Before the City/SJPOA Tentative Agreement ratification process was complete, the City
3 received a joint letter from the Presidents of SJPOA and the International Association of Fire Fighters,
4 Local 230 (hereinafter, "IAFF, Local 230") requesting to commence joint bargaining over "a second
5 tier of retirement benefits," the SJPOA "opt-in proposal," and "a broad discussion that can lead to a
6 mutually agreeable plan to lawfully modify benefits for existing plan participants as well." A true and
7 correct copy of this letter is attached hereto as **Exhibit B**.

8 13. On June 20, 2011, the City and the SJPOA met to begin additional negotiations on
9 retirement reform.

10 14. On the first day of negotiations, the City and the SJPOA agreed to a "framework" that
11 provided ground rules for negotiations. The parties agreed to negotiate over both the proposed ballot
12 measure and non-ballot measure retirement reforms. The parties agreed to negotiate these subjects at
13 the same table. In addition, the parties agreed to conclude negotiations by October 31, 2011, and
14 submit any remaining dispute to impasse resolution procedures at that time. The impasse resolution
15 procedures included mediation, followed by interest arbitration under San Jose City Charter Section
16 1111, if necessary. The parties specifically agreed that the proposed ballot measure would not be
17 subject to interest arbitration.

18 15. The parties met for thirteen (13) negotiation sessions on June 20, 2011, July 13, 2011,
19 August 1, 2011, August 30, 2011, August 31, 2011, September 13, 2011, September 15, 2011, October
20 4, 2011, October 12, 2011, October 14, 2011, October 20, 2011, October 24, 2011 and October 28,
21 2011.

22 16. The City first provided the SJPOA with the draft ballot measure language on July 6,
23 2011. Between July 6, 2011, and March 6, 2012, the City revised the proposed ballot measure six
24 times in response to the parties' discussions in negotiation and mediation, new information, and public
25 comments. These revised drafts were provided to SJPOA on September 9, October 5, October 20,
26 October 27, November 22, 2011 and on February 21, 2012. True and correct copies of the City's draft
27 ballot measures are attached hereto as **Exhibit C**.

28

1 17. SJPOA first provided a proposal on retirement issues on September 27, 2011. SJPOA
2 provided additional proposals on October 24 and October 31, at which time impasse occurred pursuant
3 to the parties' negotiation framework. After impasse, SJPOA chose to submit additional proposals on
4 November 11, November 18, December 1, 2011, and March 2, 2012. SJPOA did not provide a
5 proposal involving a ballot measure until March 2, 2012, after impasse occurred. True and correct
6 copies of SJPOA's proposals are attached hereto as **Exhibit D**.

7 18: On October 31, 2011, upon reaching impasse, the parties commenced mediation under
8 the terms of the ground rules. A true and correct copy of the City's October 28, 2011 letter to the
9 SJPOA regarding mediation is attached hereto as **Exhibit E**.

10 19. The parties engaged in post-impasse mediation on November 15 and 16, 2011, but were
11 unable to reach agreement.

12 20. During mediation, the City offered a number of concessions, including an improvement
13 in the opt-in benefit formula from 1.5% to 2.0%, a decrease in the minimum retirement age for
14 members of SJPOA from age 60 to age 57, and an increase in the COLA from a maximum of 1.0% to a
15 maximum of 1.5%.

16 21. Following mediation, the City incorporated these concessions into its November 22,
17 2011 draft ballot measure. The City informed SJPOA that the City Council would take up the
18 November 22, 2011 measure at its December 6, 2011 meeting.

19 22. On or about December 5, 2011, the City received a letter from one of its unions, IFPTE
20 Local 21, requesting that the City re-engage in mediation in the hope of reaching an agreement on
21 retirement reform, including the proposed ballot measure, and offering to waive any statutory right to
22 additional impasse resolution procedures. A true and correct copy of the December 5, 2011 letter from
23 IFPTE Local 21 is attached hereto as **Exhibit F**.

24 23. On December 6, 2011, several unions, including the SJPOA, made public comments at
25 the City Council meeting requesting that the City re-engage in mediation to an attempt to reach an
26 agreement. The City Council voted to once again delay the date of the election, from March 15 to June
27 5, 2012, and directed staff to invite the City's unions to a second round of mediation. A true and
28

1 correct excerpt of the San Jose City Council Synopsis from December 6, 2011 is attached hereto as
2 **Exhibit G.**

3 24. The parties met twice in late December 2011 and early January 2012 before reaching an
4 agreement to re-engage in mediation. The City proposed re-engaging the same mediator, Paul Roose,
5 Supervisor of the State Mediation and Conciliation Service (hereinafter "SMCS"). Mr. Roose is a
6 tenured professional whose services are provided by the State free of charge to the parties. Moreover,
7 Mr. Roose was already very familiar with the City's independent retirement plans and the recent
8 negotiation history between the parties. SJPOA proposed the parties pay to bring in a new mediator
9 from outside the SMCS. Although the City was concerned with changing mediators at this late stage in
10 the process and the significant cost associated with SJPOA's request, the City ultimately agreed to
11 utilize a mediator recommend by SJPOA and to share in the associated cost. The City and SJPOA
12 engaged in a second round of mediation on January 17, 18, and February 6 and 10, 2012.

13 25. Although the parties again were unable to reach agreement, the City again made several
14 concessions in mediation. Specifically, on February 10, 2012 the City proposed postponing the
15 additional retirement contributions for current employees remaining at the current level of benefits for
16 one year, delaying the phase out of certain benefit features for employees choosing to opt into a lower
17 level of benefits and improving the Tier 2, new employee benefit formula from 1.5% to 2.0%, and
18 increasing the COLA from a maximum of 1.0% to a maximum of 1.5%. SJPOA was provided the
19 opportunity to explore these changes in mediation, but ultimately the parties again were unsuccessful in
20 reaching an agreement.

21 26. On or about February 21, 2012, despite the failure to reach an agreement in mediation,
22 City staff recommended that the Council adopt the concessions that the City made during mediation.
23 City staff transmitted this revised ballot measure to SJPOA.

24 27. Although SJPOA had already rejected the February 21, 2012 version of the ballot
25 measure during mediation, in a letter dated February 24, 2012, SJPOA claimed it had not had an
26 opportunity to bargain this ballot measure.

27 28. On March 2, 2012, SJPOA provided a proposal that represented, in some respects, a step
28 backward from its previous positions, including its November 18, 2011 proposal. In particular,

1 SJPOA's March 2, 2012 proposal once again proposed a move to the CalPERS system for both current
2 employees and new hires, and included a higher maximum benefit of 90%, compared to its previous
3 proposal of 75%, for employees who opt-in to a lower tier.

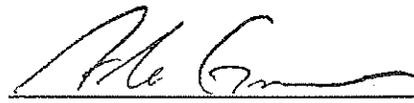
4 29. On March 6, 2012, the Council approved the February 21, 2012 version of the ballot
5 measure and voted to submit the revised measure to voters on the June 5, 2012 ballot. A true and
6 correct copy of the resolution approving the ballot measure is attached hereto as **Exhibit H**.

7 30. On June 5, 2012, pursuant to direction from the City Council, the City filed a declaratory
8 relief action in the Northern District of California, case number 5:12-CV-02904-LHK, seeking a
9 judicial determination of Measure B's substantive validity.

10 31. On June 5, 2012, the San Jose electorate approved Measure B by a margin of 69.5% to
11 30.5%.

12 32. The projected retirement costs utilized during and throughout the negotiation and
13 mediation process with the SJPOA were the most up to date information at that time provided by the
14 Retirement Board's independent actuary, Cheiron, dated July 20, 2011. At no time did the City's
15 bargaining team ever refer to or use \$650 million as a projected future retirement cost. A true and
16 correct copy of the July 20, 2011 Cheiron report is attached hereto as **Exhibit I**.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed on July 5, 2012, at San Jose, California.

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21
22 
23 ALEX GURZA