

Case No. H043540

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SIXTH APPELLATE DISTRICT**

**PETER CONSTANT, STEVEN HAUG, and SILICON VALLEY
TAXPAYERS' ASSOCIATION, a California non-profit corporation,**
Proposed Intervenors, Appellants and Petitioners

v.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA,**
Respondent

**THE PEOPLE OF THE STATE OF CALIFORNIA on the
RELATION of SAN JOSE POLICE OFFICERS' ASSOCIATION,**
Plaintiff, Respondent, and Real Party in Interest

CITY OF SAN JOSE, and CITY COUNCIL OF SAN JOSE,
Defendants, Respondents, and Real Parties in Interest

**SUPPLEMENTAL DECLARATON OF
GREGG MCLEAN ADAM IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE OR, IN THE
ALTERNATIVE, SUPERSEDEAS, OR OTHER
APPROPRIATE RELIEF**

From Order of the Superior Court of Santa Clara County
The Honorable Beth McGowen, Presiding
Superior Court Case No. 2013-cv-245503

(Counsel listed on following page)

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San Francisco, CA 94104
(415) 266-1800

*Attorneys for Plaintiff, Respondent, and Real Party in Interest
San Jose Police Officers' Association*

I, Gregg McLean Adam, declare as follows:

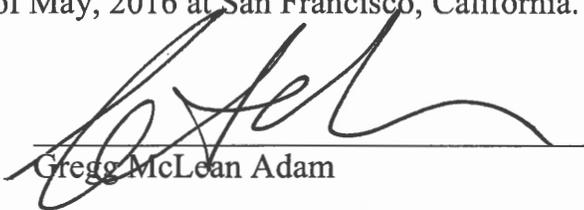
1. I am a partner at the law offices of Messing Adam & Jasmine LLP (“MAJ”) and am general counsel for Plaintiff San Jose Police Officers’ Association (the “SJPOA”). I have been the primary lawyer assigned on behalf of SJPOA during the litigation and settlement discussion about Measure B. By virtue of that representation, I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would testify competently as to them. I make this declaration in opposition to Peter Constant, Steven Haug, and Silicon Valley Taxpayer’s Association’s Petition for Writ of Mandate or, in the Alternative, Supercedeas, or Other Appropriate Relief.

2. Attached hereto as Exhibit A is a true and correct copy of the March 8, 2016 agreement between the City of San Jose, San Jose Fire Fighters, Local 230 and SJPOA concerning ballot language for a proposed charter amendment concerning employee pension benefits (referred to as the “agreed amendment” in the accompanying Supplemental Response by SJPOA).

3. Attached hereto as Exhibit B is a true and correct copy of the May 5, 2016 agreement between the City of San Jose and all of its labor unions concerning ballot language for a proposed charter amendment concerning employee pension benefits (also pertaining to the agreed amendment).

4. On or about May 11, 2016, the City reached out to its labor unions seeking to begin the process of meeting and conferring over a potential alternate charter amendment based on the settlement framework.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of May, 2016 at San Francisco, California.



Gregg McLean Adam

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION

and

THE SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230

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

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

Pension Modification

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

1. Reservation of Voter Authority

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

EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

March 8, 2016

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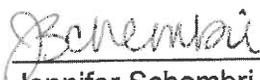
(B) In the event no agreement on ballot measure language is reached with the bargaining units representing employees in the Federated City Employees' Retirement System, the parties agree that this ballot measure language shall be placed on the November 2016 ballot for employees in the Police and Fire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

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

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

For Employer:

Norberto Dueñas Date
City Manager

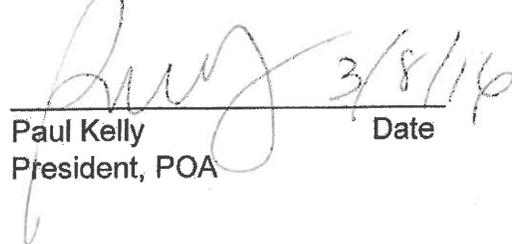
 3/8/16

Jennifer Schembri Date
Director of Employee Relations

 3/8/16

Charles Sakai Date
Labor Consultant

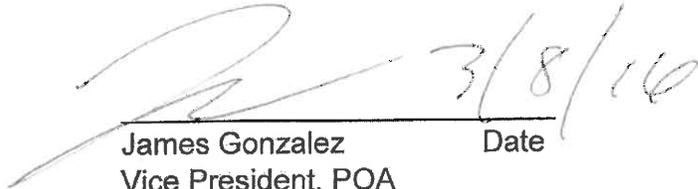
For the Unions:

 3/8/16

Paul Kelly Date
President, POA

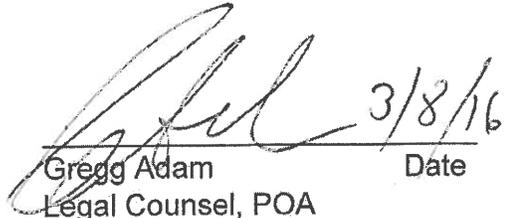
 3/8/16

Sean Kaldor Date
President, IAFF

 3/8/16

James Gonzalez Date
Vice President, POA

Christopher Platten Date
Legal Counsel, IAFF

 3/8/16

Gregg Adam Date
Legal Counsel, POA

SIDE LETTER AGREEMENT

BETWEEN

The City of San Jose

AND

The Association of Building, Mechanical and Electrical Inspectors (ABMEI)
The Association of Engineers and Architects, IFPTE Local 21 (AEA)
The Association of Legal Professionals (ALP)
The Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)
The City Association of Management Personnel, IFPTE Local 21 (CAMP)
The Confidential Employees' Organization, AFSCME Local 101 (CEO)
The San Jose Fire Fighters, IAFF Local 230 (IAFF)
The International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
The Municipal Employees' Federation, AFSCME Local 101 (MEF)
The International Union of Operating Engineers, Local No. 3 (OE#3)
and
The San Jose Police Officers' Association (POA)

The parties agree to the following. The parties agree that they have met and conferred in good faith, and that this agreement fulfills the City's *Seal Beach* bargaining obligations related to this ballot measure and fulfills the terms of the *Quo Warranto*/Ballot Measure Implementation Plan, and any related addendums, provided in the Alternative Pension Reform Settlement Frameworks.

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

Pension Modification

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

1. Definitions. The following definitions shall apply to all provisions of Article XV-A.

- a. "Defined Retirement Benefits." A defined retirement benefit is any defined post-employment benefit program, including defined benefit pension plans and defined benefit retiree healthcare benefits.

EXHIBIT **B**

Side Letter Agreement – Ballot Measure Language

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- b. *"Enhancement:" An enhancement is any change to defined retirement benefits, including any change to pension benefits or retirement formula that increases the total aggregate cost of the benefit in terms of normal cost and unfunded liability as determined by the Board's actuary, or any change to defined benefit retiree healthcare benefits that increases the total aggregate cost of the benefits in terms of normal cost and unfunded liability as determined by the Board's actuary. This does not include other changes which do not directly modify specific defined retirement benefits, including but not limited to any medical plan design changes, subsequent compensation increases which may increase an employee's final compensation, or any assumption changes as determined by the Retirement Board.*
- c. *"Operative date" would be the date that any resolution or ordinance implementing the enhancement to a member's retirement formula or retirement benefit adopted by the City Council becomes effective.*

2. Reservation of Voter Authority

- a. *There shall be no enhancements to defined retirement benefits in effect as of January 1, 2017, without voter approval.*
 - b. *If the State Legislature or the voters of the State of California enact a requirement of voter approval for the continuation of defined pension benefits, the voters of the City of San Jose hereby approve the continuation of current pension benefits for employees.*
- (1) *By passage of this Measure, the voters hereby approve and authorize the continuation of the following benefits, which are already in effect for City employees:*
- i. *For Tier 1 employees in the Federated City Employees' Retirement System as defined by the Municipal Code, including but not limited to, the normal age of retirement shall be 55, with an accrual rate of 2.5% per year to a maximum of 75% of the final compensation, and the Cost-of-Living-Adjustment shall be 3.0% per year.*
 - ii. *For Tier 1 employees in the Police & Fire Department Retirement Plan as defined by the Municipal Code, including but not limited to, the normal age of retirement shall be age 50 with twenty-five years of service or age 55 with twenty years of service, with a maximum benefit of 90% of final compensation, and the Cost-of-Living-Adjustment shall be 3.0% per year.*
 - iii. *For Tier 2 employees in the Federated City Employees' Retirement System who were originally hired into City service on or after September 30, 2012, as further defined by the Municipal Code, including but not limited to, the normal age of retirement shall be 62, with an accrual rate of 2.0% per year to a maximum of 70% of the final compensation, and the Cost-of-Living-Adjustment shall be based on years of service and CPI, but no greater than 2.0% at maximum years of service.*
 - iv. *For Tier 2 employees in the Police & Fire Department Retirement Plan who were originally hired into City service as a sworn Police employee on or after August 4, 2013, or who were originally hired into City service as a sworn Fire employee on or after January 2, 2015, as further defined by the Municipal Code, including but not limited to, the normal*

Side Letter Agreement – Ballot Measure Language

May 5, 2016

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age of retirement shall be 57 with an accrual rate that shall be based on years of service and shall range from at least 2.4% per year of service to no greater than 3.4% at the maximum years of service, with a maximum pension benefit of 80% of the final compensation, and the Cost-of-Living-Adjustment shall be based on CPI, but no greater than 2.0% per year.

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

- a. *In recognition of the interests of the taxpayers and the responsibilities to the plan beneficiaries, all pension and retiree healthcare plans shall be operated in conformance with Article XVI, Section 17 of the California Constitution. This includes but is not limited to:*
- (1) All plans and their trustees shall assure prompt delivery of benefits and related services to participants and their beneficiaries;*
 - (2) All plans shall be subject to an annual actuarial analysis that is publicly disclosed in order to assure the plan has sufficient assets;*
 - (3) All plan trustees shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;*
 - (4) All plan trustees shall diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is not prudent to do so;*
 - (5) Determine contribution rates on a stated contribution policy, developed by the retirement system boards; and*
 - (6) When investing the assets of the plans, the objective of all plan trustees shall be to maximize the rate of return without undue risk of loss while having proper regard to the funding objectives of the plans and the volatility of the plans' contributions as a percentage of payroll.*

4. No Retroactive Defined Retirement Benefit Enhancements

- a. *Any enhancement to a member's defined retirement benefit adopted on or after January 1, 2017, shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.*
- b. *If a change to a member's retirement membership classification or a change in employment results in an enhancement in the retirement formula or defined retirement benefits applicable to that member, except as otherwise provided under the plans as of [effective date of ordinance], that enhancement shall apply only to service performed on or after the effective date of the change and shall not be applied to any service performed prior to the effective date of the change.*

Side Letter Agreement – Ballot Measure Language

May 5, 2016

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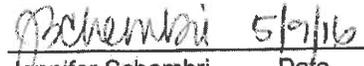
(B) The parties to this agreement agree to endorse the November 2016 ballot measure.

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

For the City:



Norberto Dueñas Date
City Manager



Jennifer Schembri Date
Director of Employee Relations

Charles Sakai Date
Labor Consultant

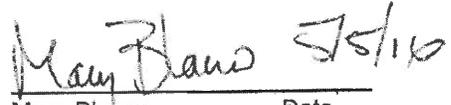
For the Unions:



Gregg Adam Date
Legal Counsel, POA



Charles Allen Date
AFSCME Local 101



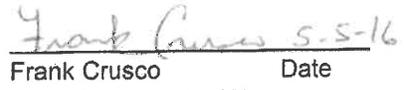
Mary Blanco Date
OE#3



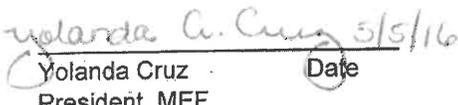
Kara Capaldo Date
President, CAMP



Steve Contreras Date
President, AMSP



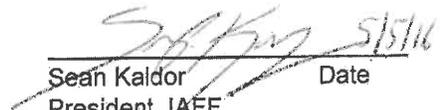
Frank Crusco Date
Chief Steward, IBEW



Yolanda Cruz Date
President, MEF



Peter Fenerin Date
President, ABMEI



Sean Kaldor Date
President, IAFF



Paul Kelly Date
President, ROA



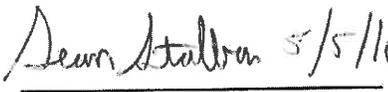
Christopher Platten Date
Legal Counsel



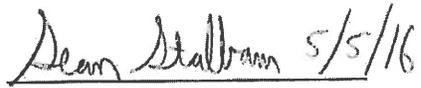
David Printy Date
President, AEA



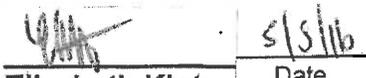
Tom Saggau Date
Labor Consultant



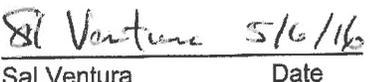
Michael Seville Date
IFPTE Local 21



Sean Stalbaum Date
IFPTE Local 21



Elizabeth Klotz Date
ALP



Sal Ventura Date
IBEW



LaVerne Washington Date
President, CEO

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On May 16, 2016, I served the foregoing documents described as:
SUPPLEMENTAL DECLARATION OF GREGG MCLEAN ADAM IN OPPOSITION TO PETITION FOR WRIT OF MANDATE OR, IN THE ALTERNATIVE, SUPERSEDEAS, OR OTHER APPROPRIATE RELIEF on the parties in this action by serving:

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(213) 897-2255
Attorneys for Attorney General and the
State of California

(X) BY ELECTRONIC SERVICE: By transmitting via TrueFiling to the above parties at the email addresses listed above.

Executed on May 16, 2016, at Los Angeles, California.

(X) (State): I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Charice L. Lawrie