

**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, AFCME 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)

**Alternative Pension Reform Act**

The parties agree to the terms of the attached ballot measure, entitled the "Alternative Pension Reform Act" (hereafter, "Act"), for consideration by City Council to be placed before the voters of the City of San Jose on the November 2016 ballot.

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 the Act.

The Unions shall endorse the Ballot Measure.

This agreement shall become effective when signed by all parties below and adopted by City Council.


**For the City:**

  
 \_\_\_\_\_  
 Norberto Dueñas  
 City Manager

7/22/16  
 Date

  
 \_\_\_\_\_  
 Jennifer Schembri  
 Director of Employee Relations

7/22/16  
 Date

  
 \_\_\_\_\_  
 Charles Sakai  
 Labor Consultant


7/22/16  
 Date

Side Letter Agreement – "Alternative Pension Reform Act" Ballot Measure Language

July 21, 2016

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For the Unions:

 _____ Gregg Adam Legal Counsel, POA	8/2/16 Date	 _____ Charles Allen AFSCME Local 101	7-26-16 Date	 _____ Mary Blanco OE#3	7/22/16 Date
 _____ Kara Capaldo President, CAMP	7-22-16 Date	 _____ Steve Contreras President, AMSP	7-22-16 Date	 _____ Frank Crusco Chief Steward, IBEW	7-22-16 Date
 _____ Yolanda Cruz President, MEF	7/28/16 Date	 _____ Peter Fenerin President, ABMEI	7/21/16 Date	 _____ Sean Keldor President, IAFF	7/21/16 Date
 _____ Paul Kelly President, POA	7/21/16 Date	 _____ Steve Pagan AEA	Date	 _____ Christopher Platten Legal Counsel	7/21/16 Date
 _____ Tom Saggau Labor Consultant	7-27-16 Date	 _____ Sean Stalbaum IFPTE Local 21	7/22/16 Date	 _____ Vera Todorov ALP	7/22/2016 Date
 _____ Sal Ventura IBEW	7/27/16 Date	 _____ LaVerne Washington President, CEO	7/26/16 Date	 _____ James Gonzales Vice President, POA	7/26/16 Date

## ALTERNATIVE PENSION REFORM ACT

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*Alternative Pension Reform Act.*"

### **Section 1501-A: Intent**

The City of San Jose's financial ability to provide basic services is essential to the health, safety, quality of life and well-being of its residents. This Act is intended to strengthen the City's financial ability 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. This Act is further designed to ensure that no future defined retirement benefit increases occur without voter approval.

### **Section 1502-A. Act Supersedes All Conflicting Provisions**

The Sections of Article XV-A enacted by the voters pursuant to the ballot measure known as Measure B in 2012 are hereby replaced in their entirety by the following provisions. The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension, or postemployment benefit provisions in the Charter, ordinances, resolutions, or other enactments.

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.

### **Section 1503-A. Reservation of Voter Authority**

- (a) There shall be no enhancements to defined retirement benefits in effect as of January 1, 2017, without voter approval. A defined retirement benefit is any defined post-employment benefit program, including defined benefit pension plans and defined benefit retiree healthcare benefits. An enhancement is any change to defined retirement benefits, including any change to pension or retiree healthcare 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 Retirement 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.
- (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 the pension benefits in existence at the time of passage of the State measure including those established by this measure.

### **Section 1504-A: Retirement Benefits – Tier 2**

The Tier 2 retirement plan shall include the following benefits listed below. This retirement program shall be referred to as "Tier 2" and shall be effective for employees hired on or after the following dates except as otherwise provided in this section: (1) Sworn Police Officers: August 4, 2013; (2) Sworn Firefighters: January 2, 2015 and (3) Federated: September 30, 2012. Employees initially hired before the effective date of Tier 2 shall be Tier 1 employees, even if subsequently rehired. Employees who qualify as "classic" lateral employees

under the Public Employees' Pension Reform Act and are initially hired by the City of San Jose on or after January 1, 2013, are considered Tier 1 employees.

- (a) **Cost Sharing.** The City's cost for the Tier 2 defined benefit plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities), except as provided herein. Normal cost shall always be split 50/50. In the event an unfunded liability is determined to exist, employees will contribute toward the unfunded liability in increasing increments of 0.33% per year, with the City paying the balance of the unfunded liability, until such time that the unfunded liability is shared 50/50 between the employer and employee.
- (b) **Age.** The age of eligibility for service retirement shall be 57 for employees in the Police and Fire Retirement Plans and 62 for employees in the Federated Retirement System. Earlier Retirement may be permitted with a reduction in pension benefit by a factor of 7% per year for employees in the Police and Fire Retirement Plan and a reduction in pension benefit by a factor of 5% per year for employees in the Federated Retirement System. An employee is not eligible for a service retirement earlier than the age of 50 for employees in the Police and Fire Retirement Plan or age 55 for employees in the Federated Retirement System. Tier 2 employees shall be eligible for a service retirement after earning five years of retirement service credit.
- (c) **COLA.** Cost of living adjustments, or COLA, shall be equal to the increase in the Consumer Price Index (CPI), defined as San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-Urban Consumers, December to December, with the following limitations:
1. For Police and Fire Retirement Plan members, cost of living adjustments applicable to the retirement allowance shall be the lesser of the Consumer Price Index (CPI), or 2.0%.
  2. For Federated Retirement System members, cost of living adjustments applicable to the retirement allowance shall be the lesser of CPI or:
    - a. 1-10 total years of City service and hired after the effective date of the implementing ordinances of the revised Tier 2: 1.25%
    - b. 1-10 years total years of City service and hired before the effective date of the implementing ordinances of the revised Tier 2: 1.5%
    - c. 11-20 total years of City service: 1.5%
    - d. 21-25 total years of City service: 1.75%
    - e. 26 or more total years of City service: 2.0%
  3. The first COLA adjustment will be prorated based on the number of months retired in the first calendar year of retirement.
- (d) **Final Compensation.** "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, except members of the Police and Fire Plan whose pay shall include the same premium pays as Tier 1 members.
- (e) **Maximum Allowance and Accrual Rate.** For Police and Fire Plan members, service retirement benefits shall be capped at a maximum of 80% of final compensation for an employee who has 30 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on August 25, 2015. For Federated Retirement System members, service retirement benefits shall be capped at a maximum of 70% of final compensation for an employee who has 35 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on December 15, 2015, and January 12, 2016.

- (f) **Year of Service.** 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).

**Section 1505-A: Disability Retirements**

- (a) The definition of "disability" shall be that as contained in the San Jose Municipal Code in Sections 3.36.900 and 3.28.1210 as of the date of this measure.
- (b) Each plan member seeking a disability retirement shall have their disability determined by a panel of medical experts appointed by the Retirement Boards.
- (c) The independent panel of medical experts will make their determination based upon majority vote, which may be appealed to an administrative law judge.

**Section 1506-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") has been discontinued, and the assets returned to the appropriate retirement trust fund. In the event assets are required to be retained in the SRBR, no supplemental payments shall be permitted from that fund without voter approval.

The SRBR will be replaced with a Guaranteed Purchasing Power (GPP) benefit for all Tier 1 retirees. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power of their original pension benefit effective with the date of the retiree's retirement. The GPP will apply in limited circumstances (for example, when inflation exceeds the COLA for Tier 1 retirees for an extended period of time). Any calculated benefit will be paid annually in February.

**Section 1507-A: Retiree Healthcare**

The defined benefit retiree healthcare plan will be closed to new employees as defined by the San Jose Municipal Code in Chapter 3.36, Part 1 and Chapter 3.28, Part 1.

**Section 1508-A: 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.

**Section 1509-A: Retirement Contributions**

There shall be no offset to normal cost contribution rates in the event plan funding exceeds 100%. Both the City and employees shall always make the full annual required plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

**Section 1510-A: 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.
- (c) "Operative date" would be the date that any resolution or ordinance implementing the enhancement to a member's defined retirement formula or defined retirement benefit adopted by the City Council becomes effective.

**Section 1511-A: Severability**

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.