

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 City and the eleven (11) bargaining units agree to the language below regarding the Voluntary Employees' Beneficiary Association (VEBA) Advisory Committee.

A. Purpose

This purpose of this document is to define the VEBA Advisory Committee (the "VAC" or "Committee") for the San José Police and Fire Voluntary Employees Benefits Association and the San José Federated Voluntary Employees Benefits Association (collectively, "VEBA" or "VEBAs"), including its design, implementation and operation.

Once the Committee has been seated, it will direct the development of VEBA Administrative Policies and Procedures in collaboration with the VEBA Administrator and/or other independent consultant(s), as needed and consistent with the tax rules governing the tax-exempt status of voluntary employees' beneficiary associations under section 501(c)(9) of the Internal Revenue Code.

B. VEBA Advisory Committee (VAC) Design

1. The operation and administration of the VEBAs shall be the joint responsibility of the Trustees who shall be fiduciaries with respect to their duties in the operation and administration of the VEBAs.
2. All Trustees, shall be active employees who are members of the VEBAs established under Chapters 3.57 and 3.58 of Title 3 of the San José Municipal Code.

3. Trustees shall be appointed as soon as possible to June 1, 2018.
4. The VAC shall be composed of five (5) Trustees, as follows:
 - a) One (1) active member of San Jose Fire Fighters, IAFF Local 230 ("Local 230");
 - b) One (1) active member of the San José Police Officers' Association ("POA");
 - c) Two (2) active members of the Federated unions;
 - d) One (1) active member of unrepresented employees;
5. The term for each Trustee shall be four (4) years, except in the instance of death, resignation, or disqualification (e.g. exiting the VEBA Plan, leaving the Union, termination of employment, etc.) or as otherwise provided in this agreement or the VEBA Administrative Policies and Procedures. A Trustee may resign at any time with at least thirty (30) days written notice to the Chairperson and Co-Chairperson.
 - a) Unrepresented – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2019, and terms end every four years thereafter.
 - b) POA – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2020, and terms end every four years thereafter.
 - c) Local 230 – First appointment as soon as possible to June 1, 2018. First term ends May 31, 2021, and terms end every four years thereafter.
 - d) Federated Unions – First appointment as soon as possible June 1, 2018. First terms end May 31, 2022, and terms end every four years thereafter.
6. The union representatives shall be nominated by the respective unions. The City Manager or designee shall nominate the unrepresented employee.
 1. The appointment of the employees to the VAC shall be routine business on the council agenda.
 2. The City Council will approve the nomination unless the Council finds a cause for rejection.
 3. Cause includes, but is not limited to, a failure to disclose all conflicts of interest, a significant potential for a conflict of interest to arise, the appearance of a conflict of interest, or the existence of a conflict of interest, and such other information as may be available that the Council finds would hinder the nominee' ability to carry out his or her fiduciary duty to the VEBA Plans or the participants and beneficiaries of such plans.
7. In the event of a mid-term vacancy, the unions and/or City Manager or designee shall conduct the process to nominate a replacement using the above definitions.
8. The Trustees shall select annually one of their members to act as Chairperson of the VAC and one to act as Co-Chairperson.
9. There are no term limits for Trustees. There are no term limits for the Chairperson or Co-chairperson.
10. Trustees shall not be compensated for their services by the VEBA Plan. Trustees shall be reimbursed by the VEBA Plan for all reasonable expenses paid properly and actually incurred in connection with the performance of their official duties as Trustees, as authorized by the Trustees. The VAC shall adopt a travel and expense reimbursement policy.
11. Trustees shall be provided with paid release time for attendance at committee meetings for any portion of the employee's assigned workday that coincides with attendance at committee

meetings. Trustees should use the Union Release Time (URT) code for any hours spent on authorized paid release time.

12. A Trustee may be removed by the City Council for cause as defined by Section 6.3. A member of the City bargaining units, the City Manager, or retired VEBA member may submit a written request for removal to City Council. Any such request shall state the grounds for which removal is sought.
 1. The City Clerk shall schedule a hearing before the City Council to consider any written request for removal of a Trustee.
 2. Notice of hearing shall be provided to the affected Trustee at least ten days prior to the date of the hearing.

After the hearing, the City Council may remove the Trustee if the council makes a written finding evidence of cause for removal.

C. Meetings

1. The VAC shall meet quarterly, or more frequently if the VAC deems it necessary.
2. With the exception of closed sessions, meetings of the Trustees shall be open to interested persons and follow the City of San José's open meeting rules and applicable law. The City will provide the meeting space necessary and will provide any necessary instruments to record the meetings pursuant to the open meeting rules.
3. A quorum of Trustees shall be necessary to conduct VAC business. A quorum shall consist of four (4) Trustees;
4. All VAC action requires an affirmative vote of at least three (3) Trustees, regardless of vacancies and regardless of whether the meeting consists of the full five-person Committee or the minimum four-person quorum.

D. Committee Financial Responsibilities

In addition to the responsibilities of the VAC provided by City of San Jose Municipal Code Chapters 3.57 and 3.58, the VAC as a whole has fiduciary responsibility for the management of the investment options available under the VEBA Plans. The Trustees shall have exclusive authority and discretion acting as the Trustees as provided herein to control and manage the operation and administration of the VEBA Plan. Each Trustee expressly accepts designation as a fiduciary and as a Trustee, and assumes the duties, responsibilities and obligations of Trustee as created in this agreement and under applicable law, including California Government Code sections 53620 and 53622. All Trustees shall receive and be required to attend Fiduciary training at the expense of the Plans.

The VAC reserves the right to delegate a portion of this fiduciary authority to the Chairperson and Co-Chairperson. However, delegation does not relieve any Trustee from joint and several fiduciary liability for the VEBAs.

E. Committee Decisions

1. Investments

- a. The VAC has fiduciary responsibility for the management of the investment options available under the VEBA Plans. The VAC shall be responsible for drafting an investment policy for the investment options with the investment advisor's input.
- b. The VAC shall determine the investment options available to VEBA members for their accounts under the VEBAs. These options shall be reviewed at least annually for appropriateness, which would include making assessments on the investment options using care, skill, prudence, and diligence to ensure the diversity of the options, to minimize the risk of investment losses, and to maximize the rate of return given the economic conditions at the time of review. The VAC shall utilize its investment advisor and/or vendor for review of the investment options using benchmarks of similarly situated investments in the market. The VAC will document the process of monitoring, benchmarking, and if necessary, changing investment options. The list of investment options shall be managed to provide a suitable range of strategies and asset classes to accommodate a wide spectrum of member objectives. All investment options shall be optimized to ensure they are competitive with their peers in terms of both performance and cost. The range of options and individual options shall also comply with the Board's fiduciary obligations, including any applicable limitations such as those provided under California Government Code section 53213.5 for individually directed investments by members.
- c. The VAC does not determine how individual member funds should be invested.

2. Medical Decisions and Reimbursements

- a. The VAC does not make medical decisions.

3. The plan shall provide its trustees with Liability Coverage to cover the performance of their duties.

4. The Trustees shall have the authority to enter into agreements on behalf of the VEBA Plans for the administration of the VEBA Plans, custody of VEBA Plan assets and for management of the investment options available under the VEBA Plans, where the fees to be paid under such an agreement are to be paid by the VEBA members or where there is no amount to be paid by the City under the agreement.

F. Conflict of Interest

Trustees shall be free from Conflicts of Interest. The term "Conflict of Interest" means any direct or indirect material, financial, personal, or legal impediment to the free exercise of judgment on behalf of the VEBA. A Trustee of the VEBA will be free of compromising influences and loyalties and will, at all

times, fulfill his or her responsibilities in good faith, solely on behalf of the VEBA members and beneficiaries. All Trustees will be required to fill out a Form 700 form.

Trustees who are paid salaries by the City or labor organizations do not have a conflict by virtue of receiving such salaries and are not prohibited from serving as Trustees. Trustees who hold any position with the City or who hold any position with a union are not conflicted by virtue of holding that position and are not prohibited from serving as Trustees.

G. The VEBA Administrator

The VEBA Administrator will hold VEBA assets and will be responsible for the general administration of the VEBA. The duties and responsibilities of the VEBA Administrator are established in an administrative service agreement between the VEBA Administrator and the VAC. The agreement with the VEBA Administrator will include provisions for receiving, holding, and disbursing the assets of the VEBAs. The VEBA Administrator must be qualified and licensed to do business in the State of California. The VEBA Administrator at the time the VEBA Plans are established shall be Voya Financial, Inc. The VEBA Administrator shall be under contract to the VAC, and the VAC has the authority to change the VEBA Administrator.

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

For the City:

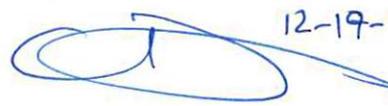
 1/26/18

Jennifer Schembri Date
Director of Employee Relations

For the Unions:

 1/25/18

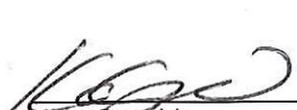
Gregg Adam Date
Legal Counsel, POA

 12-19-17

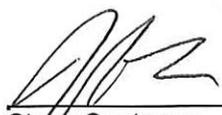
Charles Allen Date
AFSCME Local 101

 1/22/18

Mary Blanco Date
OE#3

 1/4/18

Kara Capaldo Date
President, CAMP

 1/12/18

Steve Contreras Date
President, AMSP

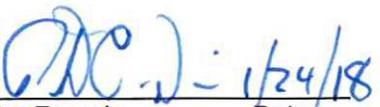
 1-10-2018

Frank Crisco Date
Chief Steward, IBEW

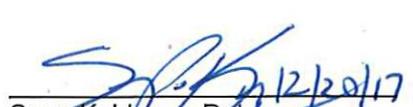
VEBA Advisory Committee Side Letter

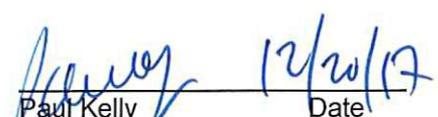
December 15, 2017

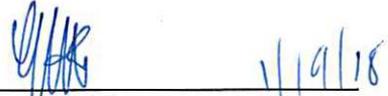
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Peter Fenerin Date
President, ABMEI


Bradley Fox 1/10/18
President, AEA


Sean Kaldor Date
President, IAFF

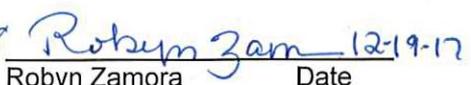

Paul Kelly 12/20/17
President, POA

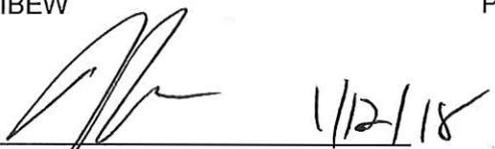

Elizabeth Klotz 1/19/18
President, ALP


Christopher Platten 1/26/18
Legal Counsel Date


Dan Rodriguez 1/11/18
IBEW Date


Laverne Washington 1/2/18
President, CEO Date


Robyn Zamora 12-19-17
President, MEF Date


Matt Mason 1/12/18
Business Representative, IFPTE Date