

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE TO APPROVE THE BASIC PLAN DOCUMENT FOR THE DEFERRED COMPENSATION PLAN

WHEREAS, the City of San Jose's Deferred Compensation Program consists of two plans: the voluntary Deferred Compensation Plan and the PTC Plan; and

WHEREAS, the Deferred Compensation Plan is governmental deferred compensation plan defined by Section 457(b) of the Internal Revenue Code; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that responsibility for the administration of the Deferred Compensation Plan should reside with the City Manager, including the operation and interpretation of the Plan in accordance with its terms and contractual authority to enter into contracts for the administration of the Plan; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that the oversight role and responsibilities of the Deferred Compensation Advisory Committee should be reviewing and advising on annual budgets and proposed changes to the Deferred Compensation Plan, the Investment Policy, and the investment menu; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that the basic provisions of the Deferred Compensation Plan should be set forth in the San Jose Municipal Code (Name, Purpose, Establishment of Trust, Definitions, Deferral of Compensation, Participation in the Plan, and Administration of the Plan, etc.), and the specifics of the Deferred Compensation Plan should be set forth in a stand-alone Basic Plan Document; and

WHEREAS, the Deferred Compensation Plan has been updated to ensure compliance with tax laws and align with the City's practices.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. That the Basic Plan Document for the Deferred Compensation Plan is hereby approved. The Basic Plan Document for the Deferred Compensation Plan is effective the date of the amended ordinance modifying the provisions of the Deferred Compensation Plan in Chapter 3.48 of Title 3 of the San Jose Municipal Code relating to the administration and provisions of the Deferred Compensation Plan that was approved by the City Council on February 23, 2021.
2. The terms of the Basic Plan Document for the Deferred Compensation Plan are attached hereto as Attachment A and incorporated in this Resolution.

ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

**CITY OF SAN JOSE, CALIFORNIA, DEFERRED COMPENSATION
PLAN**

BASIC PLAN DOCUMENT

As of [Effective Date of Ordinance]

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CITY OF SAN JOSE, CALIFORNIA, DEFERRED COMPENSATION PLAN

PREAMBLE

(3.48.010 and 3.48.020)

The City of San Jose, California ("City") established the City of San Jose, California, Deferred Compensation Plan (hereinafter referred to as the "Plan"), pursuant to Chapter 3.48 of Title 3 of the San José Municipal Code ("SJMC"). In addition to SJMC Chapter 3.48, the City hereby adopts this basic plan document; thus, the Plan consists of the provisions set forth in this basic plan document and the applicable sections of the SJMC

The Plan is intended to be an eligible governmental deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code ("Code") pursuant to Chapter 3.48 of Title 3 of the San Jose Municipal Code ("SJMC"), as well as, a governmental plan within the meaning of Code Section 414(d). The primary purpose of the Plan is to attract and hold personnel by permitting them to enter into agreements with the City of San Jose which will provide for deferral of payment of a portion of their current compensation until death, retirement, termination of employment or other event as provided herein, in accordance with the applicable provisions of the SJMC (3.48.020) and the Code.

The Plan consists of the provisions set forth in this basic plan document and the applicable sections of the SJMC.

ARTICLE I DEFINITIONS

(3.48.030)

As used in this Plan, the following terms have the meaning set forth below, unless a different meaning is clearly required by the context.

1.1 "Account" means a sub-account maintained for a Participant to hold and account for the contributions which are the proceeds of deferral of compensation from the City including any adjustment for earnings and expenses. The sub-account includes a separate account for designated Roth Contributions, rollover contributions, Roth rollover contributions, and transferred amounts.

1.2 "Alternative Normal Retirement Age" means any age irrevocably designated in writing by the Participant which is:

- a. Not earlier than the earliest age at which the Participant has the right to retire under a retirement plan of the City and receive immediate retirement benefits without actuarial or similar reduction for early retirement; and
- b. No later than age seventy and one-half (70½).

1.3 "Alternate Payee" means any person who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to a Participant within the meaning of Code Section 414(p).

1.4 "Beneficiary" means a Beneficiary designated by the Participant to receive payment of benefits under the Plan, or if no Beneficiary is so designated, the Participant's estate.

1.5 "City" means the City of San Jose, California.

1.6 "City Manager" means the City Manager or the City Manager's designee.

1.7 "Committee" or "Advisory Committee" means the Deferred Compensation Advisory Committee.

1.8 "Eligible Deferred Compensation Plan" means a Plan which meets the requirements of Code Section 457(b).

1.9 "Employee" shall mean any officer or employee of the City of San Jose, California.

1.10 "Includible Compensation" means:

- a. Prior to January 1, 2002, "Includible Compensation" means the compensation for services performed for the City which (taking into account the provisions of Sections 457 and 403(b) of the Code) is currently includible in gross income. Amounts of compensation shall be determined without regard to any community property laws.
- b. After December 31, 2001, "Includible Compensation" shall have the meaning given to the term "Participant's Compensation" by Code Section 415(c)(3), consistent with the earnings codes established by the City. Amounts of compensation shall be determined without regard to any community property laws.
- c. Effective January 1, 2009, "Includible Compensation" includes differential wage payments while the Participant is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code) to the extent required by Internal Revenue Code Sections 3401(h) and 414(u)(12) the Treasury Regulations thereunder and any subsequent guidance issued under Code Section 414(u)(12). A Participant receiving differential wage payment from the City shall be treated as employed by the City, and the differential wage payment shall be treated as compensation for purposes of applying the maximum amount which may be deferred under Internal Revenue Code Sections 457(b)(2) and 457(b)(3). Furthermore, effective January 1, 2008, "Includible Compensation" includes amounts paid after the Employee's Severance Event if paid by the later of two and one-half (2 ½) months after the Employee's Severance Event, or the end of the calendar year that includes the date of the Employee's Severance Event, subject to the following requirements:
 1. The payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential),

commissions, bonuses, or other similar payments and the payment would have been made to the Employee prior to a Severance Event if the Employee had continued in employment with the City.

2. "Includible Compensation" shall include all payments to an individual who does not currently perform services for the City by reason of qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the City rather than entering qualified military service.

- d. Effective [insert effective date of ordinance], "Includible Compensation" shall mean a Participant's actual wages for services performed for the employer the year reported in box 1 of Form W-2, increased by any compensation reduction election under Sections 125, 132(f), 401(k), 403(b) or 457(b) of the Internal Revenue Code (including an election to defer compensation under this Plan). Includible compensation is determined without regard to any community property laws.

1.11 "Normal Retirement Age" means age seventy and one-half (70 ½), or that age as irrevocably selected in writing by the Participant as defined as an Alternative Normal Retirement Age. For a Participant who is a qualified police officer or firefighter as defined under Code Section 415(b)(2)(H)(ii)(I), Normal Retirement Age shall mean the age designated by the Participant that is between age 40 and age 70½.

1.12 "Participant" means any eligible Employee who fulfills the requirements of enrollment into the Plan and who is or has enrolled in the Plan and who retains the right to benefits under the Plan.

1.13 "Participation Agreement" means the agreement executed and filed by an Employee with the City or Plan Administrator, pursuant to Article II, in which an Employee elects to become a Participant in the Plan.

1.14 "Payroll Period" means a biweekly compensation period.

1.15 "Percentage Limitation" means:

- a. Prior to January 1, 2002, thirty-three and one-third percent (33 1/3%) of the Participant's Includible Compensation for the taxable year.
- b. After December 31, 2001, one hundred percent (100%) of the Participant's Includible Compensation for the tax year.

1.16 "Plan Administrator" means the City Manager or the person or entity designated by the City Manager to carry out certain administrative functions of the Plan.

1.17 "Plan Year" means a calendar year.

1.18 "Roth Account" means a separate account within an account in the Plan established that is composed of after-tax contributions made pursuant to Internal Revenue Code Section 402A.

1.19 "Severance Event" means:

- a. Prior to January 1, 2002, severance of the Participant's employment with the City that constitutes a "separation from service" within the meaning of Internal Revenue Code Section 402(e)(4)(D)(iii).
- b. After December 31, 2001, a severance of the Participant's employment with the City within the meaning of Internal Revenue Code Section 457(d)(1)(A)(ii).

1.20 "Trustee" means the City of San Jose and Advisory Committee based on the duties set forth in Chapter 3.48.060 of Title 3 of the San Jose Municipal Code.

ARTICLE II PARTICIPATION

(3.48.050, 3.48.080, 3.48.090, and 3.48.100)

2.1 **Participation in Plan.** Each Employee may elect to become a Participant of the Plan and defer payment of part of his or her Includible Compensation by executing a Participation Agreement and filing it with the City or Plan Administrator before the beginning of the month in which the deferral is to be effective.

2.2 **Election Amount.** The deferred amount must equal at least twenty-five dollars (\$25.00) per payroll period per investment company selected; exclusive of any service charge or such other minimum as the City Manager may determine.

2.3 **Effective Date.** A Participation Agreement shall be effective for the first payroll period of the next month following its execution and filing with the City or Plan Administrator, unless a later payroll period is designated by the Employee. The Participation Agreement shall continue from payroll period to payroll period and remain in full force and effect unless terminated as provided in Section 2.4.

2.4 **Termination of Contributions.** A Participant may terminate his or her contributions to the Plan, and thereby terminate further deferral of Includible Compensation, by filing with the City or Plan Administrator an executed notice of termination of contributions prior to the effective date of termination. Once terminated, a former Participant who terminated contributions cannot begin making contributions during the month in which termination occurred; however, the former Participant may elect to again begin making contributions to the Plan in a subsequent month. No amounts shall be payable to an Employee upon terminating his or her contributions in the Plan unless otherwise due, pursuant to Article VIII.

2.5 **USERRA.** Each period served by a person in the uniformed services shall, upon reemployment under the Uniformed Service Employment and Reemployment Act of 1994, as it may be amended from time to time ("USERRA"), be deemed to constitute service with the employer maintaining the Plan for the purpose of determining the accrual of benefits under the

Plan, to the extent required by and as provided under USERRA. Notwithstanding any provision in the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u) for additional elective deferrals a Participant can make upon return from qualified military service.

2.6 **Status of Participants.** Neither the establishment of the Plan nor any modification therefor, nor the establishment of any Account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the City, except as herein provided; and in no event shall the terms of employment of any Employee or Participant be modified or in any way affected hereby.

2.7 **City Participation.** Notwithstanding any other provisions of this Plan, the City will make additional deposits in the deferred compensation fund as additional Includible Compensation for services to be rendered by the Employee to the City during an employment period, provided:

- a. The Employee has elected, prior to the month in which the additional Includible Compensation is paid, to have such additional Includible Compensation deferred and invested, pursuant to this Plan; and
- b. That such additional deposit shall not exceed the maximum deferral permitted in Article III.

2.8 **Relation to Retirement System.** Any reduction in Includible Compensation of a Participant under this Plan shall be included as Includible Compensation of such Participant for purposes of computing the amount of his or her contributions or benefits under any City of San Jose retirement system.

ARTICLE III

DEFERRAL OF INCLUDIBLE COMPENSATION

(3.48.040)

3.1 **Individual Accounts.** Adequate records shall be created and maintained which reflects the value of the Account for each Participant, Alternate Payee, or Beneficiary of the Plan. Such records shall be in the form of individual Accounts, and credits and charges shall be made to such accounts in the manner herein described. A Participant shall have multiple Accounts, namely a deferral account, a Roth contribution account, and one or more rollover accounts, as necessary. Distributions and withdrawals made from an account shall be charged to the Account as of the date payment is made.

3.2 **Deferral Limits.** During each payroll period in which an Employee is a Participant in the Plan with a deferral election in effect, the City shall defer payment of such part of the Employee's Includible Compensation as is specified by the Employee in his or her Participation Agreement, provided that, except as provided in Sections 3.3 and 3.4, the maximum that each Participant may defer under this Plan for any taxable year shall not exceed the lesser of:

- a. The applicable dollar amount permitted under Code Section 457(b), as amended, and the regulations promulgated thereunder:

For the following years:	The Applicable Dollar Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000, adjusted for cost-of-living after 2006 to the extent as indexed pursuant to Code Section 457(e)(15)

; or

- b. The Percentage Limitation.

3.3 **Catch-Up Contributions.** Beginning January 1, 2002, a Participant who will attain age fifty (50) or more by the end of the tax year, is permitted to elect an additional amount of elective deferrals, up to the maximum age 50 catch-up deferrals for the year. The maximum dollar amount of the age 50 catch-up deferrals for a year is as follows.

For the following years:	The maximum age 50 catch-up dollar amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000, adjusted for cost-of-living after 2006 to the extent as provided under the Code.

3.4 **Special Section 457 Catch-up Limitation.** If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.4 exceeds the amount computed under Sections 3.2 and 3.3, then the deferral limit under this Article III shall be the lesser of:

- a. An amount equal to two times the Section 3.2 applicable dollar amount for such year; or
- b. the sum of:
 1. An amount equal to (1) the aggregate Section 3.2 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (2) the aggregate amount of Includible Compensation that the Participant deferred under the Plan during such years, plus

2. An amount equal to (1) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 3.3 and 3.4), minus (2) the aggregate contributions to Pre-2002 Coordination Plans (as defined by the Treasury Regulations and as provided in Section 3.6) for such years.

3.5 **Multiple Plan Deferral Limitation.** If a Participant is or has been a Participant in one or more eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for the purposes of applying the foregoing limitations of this Article III. For this purpose, the Plan Administrator shall take into account any other such eligible plan maintained by the City and shall also take into account any other such eligible Plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

3.6 **Pre-2002 Coordination Plans.** For purposes of Section 3.4(b)(2), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, a Code Section 402(h)(1)(B) simplified employee pension (SARSEP), a Code Section 403(b) annuity contract, and a Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the City or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.4(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

3.7 **Military Service.** An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional deferrals upon resumption of employment with the City, subject to the following:

- a. The additional deferrals shall not exceed the maximum deferrals the Employee could have elected during the period of qualified military service if the Employee's employment with the City had continued at the same level of Includible Compensation without the interruption or leave of absence, reduced by the deferrals, if any, actually made during the taxable year(s) in which the qualified military service occurred.
- b. The right to make additional deferrals is limited to the five (5) year period immediately following the resumption of employment with the City or, if sooner, a period immediately following the resumption of employment that is equal to three (3) times the length of the interruption or leave of absence.

3.8 **Excess Deferrals.** If the amount of Includible Compensation deferred in any taxable year exceeds the limitations described in this Article III, when combined with other amounts deferred by a Participant under another Eligible Deferred Compensation Plan under Code Section 457(b) for which the Participant provides information to the City, then the deferral for that taxable year, to the extent in excess of the applicable limitation (adjusted for any income or loss in value allocable thereto) shall be distributed to the Participant to the extent that the deferral exceeds the applicable limitation as soon as administratively practicable.

3.9 **Roth Contributions.**

- a. On or after January 1, 2013, an Employee may specify that any portion of the Employee's Includible Compensation that the Employee elects to defer under this Article III, may be classified as a Roth elective deferral. Roth elective deferrals are contributions made to the Plan by the City that were subject to a cash or deferred election. However, other than pretax deferrals, Roth elective deferrals are included in the Employee's compensation at the time deferred and must be irrevocably designated as Roth elective deferrals by the Employee in the Employee's Participation Agreement.
- b. **Separate Accounting.** Contributions and withdrawals of designated Roth Contributions will be credited and debited to the Roth Account maintained for each Participant.
 1. The Plan will maintain a record of the amount of designated Roth Contributions in each Participant's Roth Account.
 2. Gains, losses and other credits or charges must be separately allocated on a reasonable basis to each Participant's Roth Account and the Participant's other accounts under the Plan.
 3. No contributions other than designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Account.
- c. Roth elective deferrals shall be allocated to a separate Roth elective deferral account held under the Plan to which any earnings on such account will be allocated. No deferrals other than Roth elective deferrals will be credited to this separate account. The Roth Account will also maintain a record of the Participant's "investment in the contract" in accordance with Code Section 72 and the Treasury Regulations issued thereunder.

3.10 **Roth Deferral Limitations.** On or after January 1, 2013, if the maximum deferral amount allowed under this Article III is exceeded for any taxable year, an Employee may designate the extent to which the distribution of excess deferrals is composed of elective deferrals (other than Roth elective deferrals) and Roth elective deferrals, but only to the extent such types of deferrals were made for the taxable year. If the Employee does not designate

which type of deferrals should be distributed, the Plan will distribute the Roth elective deferrals first.

ARTICLE IV
INVESTMENTS & EXPENSES – DEFERRED COMPENSATION FUND
(3.48.070 and 3.48.180)

4.1 **Deferred Compensation Fund.** The City shall establish a deferred compensation fund to which all deferred compensation shall be credited at such times as the compensation would have been payable to Employees if not Participant(s) in the Plan, and to which all inter-plan transfer and direct rollover amounts accepted by the Plan shall be credited as received. Separate Accounts will be established for each Employee participating, which will include all amounts of deferred compensation, inter-plan transfer amounts, direct rollover amounts, investments made, shares acquired and earnings and gains on investments. Each Account will be valued at least semiannually.

4.2 **Investment Elections.** The Employee shall designate the investment of his or her Accounts. The Advisory Committee shall select funds and investments to be offered for amounts of deferred compensation in the types of investments set forth in Sections 53601 and 53602 of the Government Code of the State of California. Nothing in this Section 4.2 shall be construed to permit any type of investment prohibited by the Constitution of the State of California. In the absence of an Employee's investment direction, the Employee's Account shall be invested in the default investment option as selected from time to time by the Advisory Committee.

4.3 **Expenses.** The expenses of the Plan shall be allocated to and deducted from the Participant Accounts. Expenses incurred as a direct result of the investments held in the Trust shall be deducted from the interest, dividends, and net income of the appropriate investment prior to allocating each month's earnings to Participants. The City Manager may also assess a reasonable record-keeping fee, as needed.

ARTICLE V
ROLLOVERS AND TRANSFERS
(3.48.055 and 3.48.058)

5.1 **Rollover Contributions to the Plan.**

- a. Beginning January 1, 2002, this Plan may accept as an eligible rollover contribution, a distribution from a Code Section 401(a) or 403(a) qualified plan (excluding after-tax contributions), a Code Section 403(b) plan (excluding after-tax contributions), a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, which is an eligible rollover distribution, and credit such rollover contributions to a Participant's Account under this Plan.

- b. Beginning January 1, 2009, within twelve (12) months of a former City Employee's separation from City service, this Plan may accept an eligible rollover contribution of pre-tax contributions from an eligible retirement plan maintained by the City and credit such rollover contributions to the former Employee's Account under this Plan.
- c. The Plan shall separately account for rollover contributions accepted from any eligible retirement plan.
- d. On or after January 1, 2013, an Employee may make a rollover contribution to this Plan from another Roth elective deferral account maintained by an eligible retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c). Such rollover contributions will be held in a separate Roth rollover account to which earnings on such account shall be allocated.

5.2 **Transfers Into the Plan.**

- a. A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:
 - 1. The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);
 - 2. The transferor plan provides for transfers;
 - 3. The receiving plan provides for the receipt of transfers;
 - 4. The Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer; and
 - 5. The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participant or Beneficiary is performing services for the entity maintaining the receiving plan.
- b. A Participant who is a former Participant in an Eligible Deferred Compensation Plan of any local government or state may transfer the amounts deferred under such plan to the Plan, if the Participant has had a Severance Event with the prior employer and if the prior employer's plan provides that such a transfer will be made.

- c. Any such transferred amounts shall not be treated as a deferral subject to Article III, except that for purposes of applying the limitations, an amount deferred during any taxable year under the transferring plan shall be treated as if it had been deferred under this Plan during such taxable year.
- d. Any such transferred amounts shall otherwise be subject to the provisions of the provisions of this Plan.
- e. On or after January 1, 2013, subject to the provisions of this Section 5.2, an Employee may elect to make a direct transfer of Roth elective deferrals from an Eligible Deferred Compensation Plan of any local government or state to this Plan. Transferred amounts will be held in a Roth rollover account to which earnings on such account shall be separately allocated.

5.3 **Eligible Outgoing Rollover Distributions.**

- a. Beginning January 1, 2002, a distributee may elect to take a distribution from this Plan in the form of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- b. For purposes of this Section 5.3:
 - 1. "Distributee" means an Employee or former Employee. It also includes the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.
 - c. "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), a Roth individual retirement account described in Code Section 408A (for distributions after December 31, 2007), an individual retirement annuity described in Code Section 408(b), a SIMPLE IRA described in Code Section 408(p) after the expiration of the required two year period, an annuity plan described in Code Section 403(b), and such trust or annuity contract must separately account for amounts so transferred, including separate accounting for the portion of such distribution which is not includible in income, a qualified trust described in Code Section 401(a), or an Eligible Deferred Compensation Plan (Code Section 457(b) plan) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts an eligible rollover distributions.

- d. An "eligible rollover distribution" is any distribution of all or a portion of the balance to the credit of the distributee which constitutes an eligible rollover distribution under Code Section 401(a)(31)(D). For the purposes of distributions from other plans rolled over into this Plan, the term "eligible rollover distribution" shall not include the portion of any distribution that is not includible in gross income.
- e. The City Manager may require such documentation regarding any plan from which a rollover distribution may be accepted or to which a rollover distribution may be made as it deems necessary to effectuate the distribution, to confirm that such plan is an eligible retirement plan, and to assure that rollover distributions are permitted under such plan.

5.4 **Transfers out of the Plan.**

- a. If a Participant terminates employment with the City and accepts employment with any other local government or state, which has an Eligible Deferred Compensation Plan and which plan provides for acceptance of amounts previously deferred, the Participant may elect that all amounts previously deferred be rolled over to the new employer's plan.
- b. Beginning January 1, 2002, a Participant may transfer all or a portion of the Participant's account directly to the Trustee of a defined benefit governmental plan (as defined in Code Section 414(d)) if such transfer is:
 - 1. For the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such governmental plan; or
 - 2. A repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3) thereof.

5.5 **Documentation.** The City Manager may require such documentation regarding any plan from which a transfer or rollover may be accepted or to which a transfer may be made as it deems necessary to effectuate the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan of a local government or state or defined benefit governmental plan, as applicable, or to assure that transfers are permitted under such plan.

5.6 **Distribution Rules.** For the purposes of Code Section 72(t), a distribution from this Plan shall be treated as a distribution from a qualified retirement plan to the extent that such distribution is attributable to an amount rolled-over from a qualified retirement plan (as defined in Code Section 4974(c)).

5.7 **Beneficiary Distributions.** Effective with respect to distributions made on or after January 1, 2010, a Beneficiary other than a Participant's (or former Participant's) surviving spouse or a Participant's (or former Participant's) spouse or former spouse who is an "alternate

payee" under a qualified domestic relations order is a person eligible to make a rollover with regard to the interest of the Participant or former Participant, subject to the limitation for such a Beneficiary that an eligible retirement plan is an individual retirement account or individual retirement annuity that will be treated as an inherited individual retirement account or annuity under Code Section 402(c)(11).

ARTICLE VI
LOANS
(3.48.140)

6.1 **Loan Eligibility.** A Participant who is an active Employee may apply for and receive a loan from the balance of his or her account as provided in this Article VI. Any such loan may not be for an amount less than one thousand dollars (\$1,000.00).

6.2 **Loan Limitations.**

No loan to a Participant hereunder may exceed the lesser of:

- a. Fifty thousand dollars (\$50,000.00), reduced by the excess (if any) of the highest outstanding balance on loans from the Plan to the Participant during the one (1) year period ending on the day before the date the loan is approved (not taking into account any payments made during such one (1) year period, over the outstanding balance of any loans from the Plan to the Participant on the date the loan is made; or
- b. One-half (1/2) of the value of the Participant's vested account balance as of the day immediately preceding the date on which such loan is approved.

6.3 **Loan Aggregation.**

For purposes of Section 6.2 above:

- a. Any loan from any other plan maintained by the City shall be treated as if it were a loan made from the Plan and the balance of all loans under all plans maintained by the City shall be aggregated in determining the maximum loan available; and
- b. The amount of any loan fee shall be deducted from the Participant's Account before the determination of the maximum loan amount available.

6.4 **Loan Terms.**

The terms of the loan shall:

- a. Require level amortization with payments not less frequently than biweekly throughout the repayment period, except that, to the extent permitted by the Code and the applicable Treasury Regulations:

1. A borrower who is on a bona fide unpaid leave of absence may elect to suspend payments during the unpaid leave of absence, provided that the suspension of payments shall be for a period not to exceed one (1) year, and further provided that the term of the loan shall not be extended and the borrower must repay the loan within the term of the loan.
 2. A borrower who is on a leave of absence for the performance of uniformed service within the meaning of Code Section 414(u) of the Code may elect to suspend payment for the period of uniformed service. If the borrower so elects, then upon the borrower's return from uniformed service, the loan repayment period shall be extended by a period equal to the length of the uniformed service.
- b. Require that the loan be repaid within five (5) years unless the Participant certifies in writing to the Loan Administrator that the loan is to be used to acquire a dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant ("residential loan") and can provide substantiation of such use when the Loan Administrator requests; and
 - c. Provide for interest at a reasonable rate, as determined by the Loan Administrator, commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

6.5 **Security for Loan; Default.**

- a. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the plan invested in such loan.
- b. In the event that a Participant fails to make a loan payment by the last business day of the calendar quarter following the calendar quarter in which the payment is due, a default on the loan shall occur. In the event of such default:
 1. All remaining payments on the loan shall be immediately due and payable; and
 2. The Participant shall not be allowed to initiate another loan from the Plan until the defaulted amount is repaid.
- c. In the case of any default on a loan to a Participant, the Loan Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan as satisfaction of the loan on the date of severance from employment.
- d. Notwithstanding anything elsewhere in this Plan to the contrary, in the event a loan is outstanding on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of the interest in the Plan invested in such loan (with the Beneficiary or beneficiaries as to the remainder of his or her

interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

e. Repayment

1. The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the City to make payroll deductions from the Participant's compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Loan Administrator in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed).
2. Notwithstanding paragraph (i) above, a Participant may prepay the entire outstanding balance of his loan at any time, in whole or in part, provided that a partial prepayment shall not change the payment schedule or the interest rate on the loan.
3. If any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence and the loan suspension provision is not in effect or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Loan Administrator the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted.

6.6 **Severance from City Employment.** In the event a Participant has a Severance Event, effective February 4, 2013, Participants have the following loan repayment options:

- a. The outstanding balance of any loan may be paid no later than the last day of the month immediately following the month in which the Participant receives his or her final compensation from the City. For the purpose of this paragraph, "final compensation" includes any payments for unused accrued leave for which the Participant may be eligible; or
- b. Participant may enter into an agreement with the City for a loan repayment plan for a period not greater than five (5) years from the date the loan is granted. If, at the time of the loan, the Participant certified in writing to the loan administrator that the loan was to be used to acquire a dwelling unit which within a reasonable time was to be used as a principal residence of the Participant, the loan can be repaid over a period of up to twenty (20) years.

6.7 **Loan Fee.** The Loan Administrator, with the approval of the City Manager, may charge a loan fee for any loan made pursuant to this Article VI. The loan fee will be deducted from the Participant's Account.

6.8 **Loan Administrator.** For the purpose of this Article VI, "Loan Administrator" means the person or entity authorized by the City Manager to administer the loan program for the Plan. The City Manager may change the Loan Administrator at any time.

6.9 **Loan Rules.** The City Manager may establish such rules with respect to the loan program as the City Manager deems advisable.

6.10 **Prohibition of Loans on Roth Contributions.** Loans are not available from an Employee's Roth elective deferral account or Roth rollover account, but these Roth accounts may be taken into account in determining the maximum loan that a Participant may obtain under the provisions of Section 6.2.

6.11 **Number of Loans** Notwithstanding any other provisions of this Article VI:

- a. Participants shall be limited to having no more than one (1) residential loan and one (1) general purpose loan outstanding at any time.
- b. From May 22, 2020 through August 7, 2020, a Participant may apply for and receive a second general purpose from the balance of his or her account, provided that the second general purpose loan must satisfy all of the requirements and limits applicable under this Article VI.

ARTICLE VII CERTAIN DISTRIBUTIONS AND UNFORESEEABLE EMERGENCY (3.48.135, 3.48.136 and 3.48.137)

7.1 **Unforeseeable Emergency.**

If a Participant is faced with an unforeseeable emergency, the Participant may apply to the City Manager for a withdrawal of funds from the Plan. Such withdrawals shall be permitted, in the City Manager's discretion, only in circumstances of an unforeseeable emergency.

"Unforeseeable emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Code Section 152(a) but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved by:

- a. Reimbursement or compensation by insurance or otherwise;
- b. Liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- c. Cessation of deferrals under the Plan.

Examples of what are not considered to be an unforeseeable emergency include the need to send a participant's child to college or the desire to purchase a home.

Withdrawal from account due to an unforeseeable emergency shall only be permitted to the extent reasonably needed to satisfy the emergency need.

Any amount so approved hereunder for withdrawal, less any taxes required to be withheld, shall be paid to the Participant in a lump sum. The withdrawal shall be effective at the later of the dates specified in the Participant's application, or the date approved by the City.

On or after January 1, 2013, if a Participant obtains a withdrawal of funds as a result of an unforeseeable emergency, the Participant's Roth elective deferral account and Roth rollover account shall be distributed first in accordance with the City Manager's policies.

7.2 Other Distributions.

Notwithstanding any other provisions of this Plan, the City may change the time or methods of benefit payments pursuant to this Plan.

7.3 De Minimis Accounts.

A Participant may elect to withdraw the entire deferred compensation account balance in a lump sum if all of the following conditions are satisfied:

- a. The total balance in the account does not exceed \$5,000 without considering any amounts attributable to rollovers (Internal Revenue Code Section 411(a)(11)(D) and Treas. Reg. 1.457-6(e));
- b. There have been no deferrals under the Plan with respect to the Participant during the two (2) year period ending on the date of the distribution; and
- c. There has been no prior distribution from the Plan to the Participant.

Mandatory Liquidations. Notwithstanding any other provision of this Plan, if the value of a Participant's account upon the occurrence of a Severance Event is less than one thousand dollars (\$1,000.00), the Participant's account shall be paid to the Participant in a lump sum.

ARTICLE VIII DISTRIBUTIONS OF BENEFITS (3.48.130, 3.48.131, 3.48.132, 3.48.133, and 3.48.134)

8.1 Distributions of Benefits; Election.

- a. A Participant may elect the method of payment and the settlement options for distribution in the event of a Severance Event after such Severance Event.

- b. A Participant may elect the method of payment and the settlement options for distribution in the event of the Participant's death at any time before his or her death.
- c. If the Participant fails to make an election of the method of payment before his or her death while still in employment status, the Participant's Beneficiary may elect the method of payment at any time before payments are due.
- d. If no election of the method of payment has been made by the Participant or the Participant's Beneficiary as provided for in this Article VIII, the benefits payable to the Participant or the Participant's Beneficiary shall continue to be held in the Plan. On or after January 1, 2002, the Participant or Beneficiary may elect an inter-plan transfer or a direct rollover as provided in Article V.
- e. Effective as of January 1, 2013, a Participant shall be treated as having a Severance Event during any period the Participant is performing service in the uniformed services as described in Code Section 3401(h)(2)(A). If a Participant elects to receive a distribution from the Plan as a result of the application of this paragraph (e). In such a circumstance, the Participant may not make an elective deferrals to the Plan during the six (6) month period beginning on the date of the distribution.
- f. On or after January 1, 2013, following a Severance Event as described in Article I, except in the event of death, a Participant may elect to have a qualified rollover through a direct transfer of any portion of the Participant's non-Roth deferral account under the Plan to the Participant's Roth deferral account under this Plan. Notwithstanding Code Section 457(e)(16) there shall be included in gross income of the Participant any amount that would be includible were it not part of a qualified rollover contribution (within the meaning of Code Section 408A(e)) and Code Section 72(t) shall not apply. Any distribution to which this Section applies shall not be taken into account for purposes of Code Section 402A(c)(1), and the rules of Code Section 408A(d)(3) subparagraphs (D), (E) and (F) shall apply.

8.2 **Method of Payment of Benefits upon Severance of Employment.**

- a. In the event of termination of employment because of a Severance Event, except in the event of death, and after the expiration of 30 days after the Severance Event, the full benefits credited to the Participant's Account plus or minus subsequent investment gains or losses, but less any federal or state income taxes required to be withheld, shall be distributed to the Participant in any one of or more of the following ways:
 - 1. In a lump sum;
 - 2. In a monthly, quarterly, semiannual, or annual installments, or, for a Participant eligible for an annuity payout option, installments during the

lifetime of the Participant with or without a provision for a period certain, but in no case less frequently than annual payments. Life expectancy shall be actuarially determined by the City based on the date the distribution shall begin. Each installment payment shall not be less than fifty dollars (\$50.00), unless such payment is the entire balance remaining in the Participants' Account.

- b. The amount payable with respect to the Participant shall be paid at such times specified by the Secretary of the United States Treasury pursuant to regulations promulgated by said Secretary. Prior to January 1, 2002, distributions payable over a period of more than one (1) year shall be made only in substantially non-increasing amounts.
- c. No payment option may be selected by a Participant unless it satisfies the requirements of Code Sections 401(a)(9) and 457(d)(2).
- d. On or after January 1, 2013, any "qualified distribution" as defined below, from an Employee's Roth elective deferral account or Roth rollover account, other than a distribution of any excess deferral under Code Section 402(g)(2) and any income on the excess deferral, shall not be includible in such Participant's gross income. A "qualified distribution" is a distribution in accordance with Code Section 408A(d)(2)(A) (without regard to clause (iv) thereof). Furthermore, a distribution from an Employee's Roth elective deferral account or Roth rollover account shall not be treated as a qualified distribution if such distribution is made within the five (5) taxable year period beginning with the earlier of:
 - 1. The first taxable year for which the individual made a Roth elective deferral to this Plan; or
 - 2. If a rollover contribution was made to a Roth rollover account from a designated Roth elective deferral account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth elective deferral to such previously established account.
- e. On or after January 1, 2013, if a Roth elective deferral is made by an Employee under Section 3.7, for a year of qualified military service pursuant to Code Section 414(u) that is before the year in which the Roth elective deferral is actually made, the Employee may identify the year of qualified military service to which the Roth elective deferral applies for purposes of determining the five (5) taxable year period described in Section 8.2(d). In the absence of such designation, the Roth elective deferral shall be treated as relating to the first year of qualified military service for which the Employee could have made Roth elective deferrals under the Plan, or if later, January 1, 2013.

8.3 **Postponement of Payments of Benefits.**

The provisions of this Section 8.3 shall be administered in a manner consistent with the provisions of Section 8.1 and Code Sections 401(a)(9) and 457(d)(2). For the calendar year beginning January 1, 2002, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. For calendar years beginning on or after January 1, 2003, the Plan will apply the minimum distribution requirements in accordance with the final regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). This Section constitutes a good faith interpretation of Code Section 401(a)(9) for purposes of Section 823 of the Pension Protection Act of 2006.

- a. Subject to the requirements of Code Sections 401(a)(9) and 457(d)(2), a Participant may postpone all payments under Section 8.2. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, which shall be April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one-half (70 ½), or (ii) the calendar year in which the Participant retires from the City.

1. **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- A. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
- B. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- C. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- D. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin,

this Section, other than 8.3(a)(1)(A), will apply as if the surviving spouse were the Participant.

2. **Required Minimum Distributions during Participant's Lifetime.** Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- A. The quotient obtained by dividing the Participant's Account by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year (e.g., if the Participant's age is less than age 70 the distribution period is 27.4 plus the number of years that the Participant's age is less than 70); or
- B. If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

3. **Lifetime Required Minimum Distributions Continue through Year of Participant's Death.** Required minimum distributions will be determined under this Section 8.3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

4. **Required Minimum Distributions After Participant's Death**

Death On or After Date Distributions Begin

- A. **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- i. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - ii. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the date of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - iii. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- B. No Designated Beneficiary. If the Participant dies or on after the date distributions begin and there is no designated Beneficiary as of the September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

Death before Date Distributions Begin

- A. Participant Survived By Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account by the remaining life expectancy of the Participant's designated Beneficiary.
- B. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's

death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

C. Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse, this Section will apply as if the surviving spouse were the Participant.

b. The election to commence the distribution of benefits must be made in accordance with the provisions of Section 8.1.

8.4 **Date of Payment of Benefits.**

- a. A Participant's Account balances may continue to be invested until cash is to be withdrawn for the payment of benefits.
- b. Payment of benefits under Section 8.2 may commence any time after the occurrence of a Severance Event, and after the Participant's election to commence the distribution of benefits subject to the requirements of Code Sections 401(a)(9) and 457(d)(2).
- c. If the Participant has reached Normal Retirement Age before the occurrence of a Severance Event, or will reach, or would have reached Normal Retirement Age in the Plan Year of the Severance Event, the Participant or Beneficiary, in case of Participant's death, may elect that payments not commence until after the close of the Plan Year in which the Severance Event occurred.
- d. Payment of postponed benefits under Section 8.3(a), or Section 8.5(c) shall commence on the first day of the month following the date or age selected by the Participant or Beneficiary for payment of the postponed payments.
- e. Payment of benefits in the event of the death of the Participant may commence at any time after satisfactory proof of death, and shall commence as soon as practical after the close of the Plan Year in which death occurred, subject to satisfactory proof of death of the Participant, unless the time for payment is extended pursuant to Section 8.5(c).

8.5 **Payment of Benefits after Death.**

- a. Death Distribution. After the death of a Participant, the full benefits credited to the Participant's Account, less any federal or state income taxes required to be withheld by law, shall be distributed to Participant's beneficiaries in the manner

designated by the Participant's most recent Participation Agreement, or amendments thereto, or other designation in writing by Participant.

b. Post-Retirement Death Benefits

1. The Beneficiary of a Participant who has died after distribution has started may, subject to any limitation imposed by contract between Participant and a Plan Administrator, elect to change the method of distribution to a more rapid payout. Once such an election has been made it may not be revoked. The Beneficiary must take distribution at least as rapidly as the Participant had elected.
2. Benefits shall be distributed in one of the following:
 - A. A lump sum;
 - B. Monthly, quarterly, semiannually, or annual installments over a period not greater than:
 - i. The life expectancy of the Beneficiary if the Beneficiary is the surviving spouse of the Participant. Life expectancy shall be actuarially determined by the City, based on the date distribution to the Beneficiary shall commence.
 - ii. No installment payment shall be less than fifty dollars (\$50.00) unless it is the entire balance remaining in the Participant's Account.
 - C. A partial lump sum payment followed by monthly, quarterly, semiannual or annual installments, provided that all payments are made within a period of ten (10) years from the initial payment.
3. If the Participant dies without naming a Beneficiary or if the person(s) named are no longer alive at the time of the Participant's death, the Participant's Account shall be paid to the estate of the Participant in a lump sum.

c. Pre-Retirement Death Benefits

1. If the Participant dies before he or she has begun to receive the benefits provided by the Plan, the Beneficiary may, subject to any limitation imposed by contract between Participant and a Plan Administrator, change the method of payment elected by the Participant to a method of payment allowed by this Section.
2. If the Participant dies before he or she has begun to receive the benefits provided by the Plan, subject to the requirements of Code Section

401(a)(9) and 457(d)(2), the Beneficiary may elect to postpone distribution of some or all of the benefits payable to a later date.

- d. All distributions made under this Section 8.5 shall meet the requirements of Code Section 457.
- e. Effective as of January 1, 2007, the Plan specifically incorporates herein by reference the requirements of Code Section 401(a)(37), the Treasury Regulations thereunder and any subsequent guidance under Code Section 401(a)(37) requiring that if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiary(ies) of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment on the date before the Participant's date of death and then had a Severance Event on account of death.
- f. However, pursuant to California law, there is not a valid transfer to the former spouse if the Beneficiary designation was made prior to the divorce, unless there is clear and convincing evidence that the Participant intended to retain the former spouse as his or her Beneficiary.

ARTICLE IX MISCELLANEOUS

(3.48.060, 3.48.120, 3.48.160, 3.48.180, 3.48.181 and 3.48.185)

9.1 Administration of the Plan.

- a. The Plan and the Trust established by the Plan shall be administered by the City Manager, which shall be the sole authority to enforce the Plan and the Trust. To the extent reasonably necessary to effectively administer the Plan in accordance with the requirements of the Internal Revenue Code and any other applicable laws, regulations, or pronouncements, the City Manager may adopt amendments to this Basic Plan Document, provided such amendments do not conflict with any provisions of the San Jose Municipal Code.
- b. The City Manager shall be responsible for the operation of the Plan in accordance with its terms, and shall determine all the questions arising out of the administration, interpretation, and application of the Plan and the Trust. All such determinations shall be conclusive and binding on all persons.
- c. The City Manager shall have the authority to enter into agreements on behalf of the City for the administration of the Plan, for custodial agreements for funds, and for investments selected by the Advisory Committee under the Plan where the fees under such an agreement are to be paid by the Participants of the Plan or where there is no amount to be paid by the City under the agreement.

- d. The Advisory Committee shall have the authority to make decisions on behalf of the City as to the investment policy, the choice and nature of investments to be available under the Plan, and enter into agreements on behalf of the City for investment advice under the Plan where the fees to be paid under such an agreement are to be paid by Participants of the Plan or where there is no amount to be paid by the City under the agreement. The Advisory Committee shall have the authority to review and advise the City Manager on annual budgets and proposed changes to the Plan.
- e. The method of selection and the term of office of the members of the Advisory Committee shall be established by resolution of the City Council.

9.2 **Limitation on City Responsibility.**

- a. The City will invest funds held pursuant to agreements between Participants and City in accordance with the requests made by each Participant at the time of enrollment or change in enrollment, prospectively only.
- b. Any action by the Advisory Committee in selecting investing funds shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations. Neither City nor the Advisory Committee shall be liable to any Participant, or to any Participant's beneficiaries or heirs, or to any other person for any losses resulting from investments made under the Plan.
- c. The City hereby establishes this Basic Plan Document memorializing certain provisions of the Deferred Compensation Plan on the terms and conditions set forth herein.

9.3 **Administrative Costs.** The City Manager may determine fair and equitable cost to the City in withholding deferred compensation pursuant to this Plan or in making investments or otherwise administering or implementing the Plan. The City Manager may withhold or collect, or have withheld or collected such costs, in such manner as it deems equitable either (1) from the compensation deferred pursuant to the Plan, the income produced from any investment with respect thereto, or from principal return from any investment, whether or not augmented, or (2) from the organization receiving such investments, where required by law to collect therefrom, or if not so required, where mutually satisfactory to such organization and the City Manager, or (3) by direct charge to the Participants or any combination of the above.

9.4 **Conforming Domestic Relations Orders.**

- a. A domestic relations order means any judgment, decree or order, including approval of a property settlement agreement or separation agreement issued by a court of competent jurisdiction which relates to the provision of marital property

rights of a Participant and is made pursuant to the state domestic relations law of the state where the marital dissolution or separation occurred.

- b. The Plan shall only recognize domestic relations orders that the City Manager, in accordance with its authority under Section 9.1, determines are conforming domestic relations orders.
- c. A conforming domestic relations order is a domestic relations order that the City Manager determines conforms with the following guidelines:
 - 1. The order may provide for the establishment of a separate account for the nonparticipant spouse under the Plan. For purposes of this Section 9.4, "nonparticipant spouse" equally refers to current or former spouse of a Plan Participant.
 - 2. The order may provide, with respect to any separate account established for the nonparticipant spouse, that the nonparticipant spouse shall have the right:
 - A. To direct the investment of the account in accordance with the provisions of the Plan;
 - B. To elect the time and form of distribution from the options available under the Plan, provided that distributions shall not commence earlier than provided for in paragraph (3) below;
 - C. To designate beneficiaries of the separate account in the event of the nonparticipant spouse's death, in accordance with the procedures provided under the Plan;
 - D. To have all distributions from the account of the nonparticipant spouse made directly to the nonparticipant spouse or his or her Beneficiary.
 - 3. To conform, the order:
 - A. May not accelerate or increase any benefit provided under the Plan or create any rights greater than the Participant's rights under the Plan and under Code Section 457, and may not conflict in any other way with the Plan's distribution provisions or the requirements and limitations of Code Sections 401(a)(9), and 457(d), as amended; provided that after December 31, 2001, the nonparticipant spouse who has been awarded a separate account may elect to commence distribution of the nonparticipant spouse's separate account prior to the occurrence of a Severance Event for the Participant.

- B. May not allow the nonparticipant spouse to defer compensation under the Plan except to the extent the nonparticipant spouse is an Employee otherwise authorized to become a Participant under the Plan; and
 - C. May provide that all distributions made to the nonparticipant spouse shall be made directly to the nonparticipant spouse or Beneficiary, as applicable.
- 4. The order shall also conform with such additional guidelines as the City Manager shall establish from time to time including, with regard to the following:
 - A. Provision for the withholding of taxes required by applicable law;
 - B. Provision that the Participant and/or the nonparticipant spouse be required to pay any expenses incurred by the City in connection with the order including, without limitation, the costs of any legal action taken by the City relating to the order;
 - C. Any requirement that the nonparticipant spouse provide the City Manager with such written requests, consents or instructions as the City Manager may require in accordance with the provisions of the Plan; and
 - D. Provision expressly acknowledging that the City's obligation to the Participant is reduced to the extent that payments are to be made to the nonparticipant spouse.

9.5 **Governing Law.** This Plan shall be construed, administered, and enforced according to the laws of the state of California.

9.6 **Nonassignability.** Except as provided under Provision 6.5, to the fullest extent permitted by law, the interest of a Participant in the Plan, shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner.

9.7 **Amendment or Termination of the Plan.**

- a. The City may, at any time, terminate this Plan for all Participants. Upon such termination, each Participant in the Plan will be deemed to have terminated their service as of the date of such termination, and the value of each Participant's Account, less any taxes required to be withheld, shall be distributed to the Participants or their Beneficiaries no later than sixty (60) days after the termination of the Plan.
- b. The City may also amend the provisions of the Plan at any time; provided that no amendment shall affect the rights of the Participants or Beneficiaries to the receipt

of payment of benefits, to the extent of any compensation deferred at the time of the amendment as adjusted for income attributable to such deferred compensation prior to and subsequent to the amendment. No amendment shall divest any Participant of any rights to deferrals prior to the date of any amendment or amend the Plan so that it is no longer in compliance with the requirements of Internal Revenue Code Section 457.

- c. This Plan is intended to qualify as an eligible governmental state deferred compensation plan under Code Section 457, and shall be interpreted and administered in a manner consistent with Code Section 457 and the regulations thereunder. The City reserves the right to amend the Plan to the extent that may be necessary to conform the Plan to the requirements of Internal Revenue Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the City shall correct such administration within the period provided in Code Section 457(b). The City reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with Code Section 457.

9.8 **Repeal**. The amendments to the Plan made by the urgency ordinance adopted December 18, 2001, were made to implement provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). In the event the EGTRRA provisions implemented by the urgency ordinance terminate, expire or are repealed, the amendments made by the urgency ordinance shall be deemed terminated, expired or repealed to the extent necessary to conform this Plan to the requirements of Internal Revenue Code Section 457.

ARTICLE X ESTABLISHMENT OF TRUST (3.48.025)

10.1 **Establishment of Trusts.**

- a. There is hereby established the City of San Jose Deferred Compensation Plan Trust.
- b. Notwithstanding any contrary provision of the Plan, in accordance with Code Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held by the City in the Trust for the exclusive benefit of Participants and beneficiaries under the Plan.
- c. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust are held for the exclusive benefit of Participants and their Beneficiaries.

- d. All amounts of compensation deferred under the Plan shall be transferred to the Trust within a period that is not longer than is reasonable for the proper administration of the accounts of Participants and Beneficiaries.
- e. Prior to the satisfaction of all liabilities with respect to Plan Participants and their beneficiaries, no part of the assets or income of the Trust shall be used for, or diverted to, purposes other than for the exclusive benefit of the Plan Participants and their beneficiaries and defraying reasonable expenses of the administration of the Plan.

Executed this ____ day of _____, 2021

CITY

By: _____

Title: _____